

1 4. Respondent understands that this Interim Consent Agreement does not
2 constitute a dismissal or resolution of this matter or any matters that may be currently pending
3 before the Board and does not constitute any waiver, express or implied, of the Board's
4 statutory authority or jurisdiction regarding any other pending or future investigations, actions,
5 or proceedings. Respondent also understands that acceptance of this Interim Consent
6 Agreement does not preclude any other agency, subdivision, or officer of this State from
7 instituting civil or criminal proceedings with respect to the conduct that is the subject of this
8 Interim Consent Agreement. Respondent does not intend their acceptance of this Interim
9 Consent Agreement to constitute an admission of any fact or facts and they enter into this
10 agreement as an interim compromise of a pending matter. Respondent further does not
11 relinquish their rights to an administrative hearing, rehearing, review, reconsideration, judicial
12 review or any other administrative and/or judicial action, concerning the matters related to a
13 final disposition of this matter, unless they affirmatively does so as part of the final resolution of
14 this matter.

15 5. Respondent acknowledges and agrees that upon signing this Interim Consent
16 Agreement and returning it to the Board's Executive Director, Respondent may not revoke their
17 acceptance of this Interim Consent Agreement or make any modifications to it. Any
18 modification of this original document is ineffective and void unless mutually approved by the
19 parties in writing.

20 6. Respondent understands that this Interim Consent Agreement shall not become
21 effective unless and until it is adopted by the Board and signed by its Executive Director.

22 7. Respondent understands and agrees that if the Board does not adopt this
23 Interim Consent Agreement, they will not assert in any future proceedings that the Board's
24 consideration of this Interim Consent Agreement constitutes bias, prejudice, prejudgment, or
25 other similar defense.

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

ORIGINAL of the foregoing filed
This 22nd day of January, 2018, with:
Arizona Board of Behavioral Health Examiners
3443 N. Central Ave., Suite 1700
Phoenix, AZ 85012

COPY of the foregoing mailed via Interagency Mail
This 22nd day of January, 2018, to:
Marc Harris
Assistant Attorney General
2005 North Central Avenue
Phoenix, AZ 85004-1592

COPY of the foregoing mailed via
Certified mail no. 9489009000276039163873
This 22nd day of January, 2018 to:
Kathleen K. Exelby
Address of Record
Respondent

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. LPC-0513 for the practice of counseling
4 in Arizona.

5 2. On 03/15/17, Respondent was arrested for an Extreme DUI when her BAC
6 measured 0.27.

7 3. Immediately following her arrest, Respondent submitted a letter to the Board self-
8 reporting her arrest and adding:

9 a. Due to the seriousness of the incident, Respondent immediately sought
10 treatment.

11 b. Respondent is no longer in private practice and she does not see clients.

12 4. In a 04/17 letter to the Board, Respondent indicated the following:

13 a. Respondent's sobriety date is 03/17/17.

14 b. In the past year, Respondent's drinking habits escalated greatly and she
15 would generally drink 3-4 ounces of Vodka on a daily basis.

16 c. "For most of my life my drinking was under control/however, over the period
17 between later 2015 and 2017 I started to drink more often, including blackout
18 drinking and binging."

19 5. In 05/17, Respondent was discharged from her most recent place of treatment, in
20 which her discharge form indicated:

21 a. Respondent is still somewhat guarded however, she began to become willing
22 to take suggestions from the clinical team members and peers in the sober
23 living home.

24 b. Respondent still lacks insight into all aspects of her alcoholism, but she has
25 shown an increased willingness to do what it takes to stay sober.

1 **ORDER**

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

4 1. Respondent's license, LPC-0513, will be placed on probation for 24 months,
5 effective from the date of entry as signed below.

6 2. Respondent shall not practice under their license, LPC-0513, unless they are
7 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
8 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
9 shall immediately notify the Board in writing and shall not practice under their license until they
10 submit a written request to the Board to re-commence compliance with this Consent
11 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

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

16 **Therapy**

17 4. During the period of probation, Respondent shall attend therapy with a masters
18 or higher level behavioral health professional holding a Licensed Independent Substance Abuse
19 Counselor license and an additional independent level license. Within 30 days of the date of this
20 Consent Agreement, Respondent shall submit the name of their therapist and the therapist's
21 curriculum vitae for pre-approval by the Board Chair or designee. Also within 30 days of the
22 date of this Consent Agreement, the therapist shall submit a letter addressing why they should
23 be approved, acknowledging that they have reviewed the Consent Agreement and include the
24 results of an initial assessment and a treatment plan regarding the proposed treatment of
25 Respondent.

1 **Recovery Program**

2 9. While on probation, Respondent shall attend recovery support meetings at a
3 minimum of 3 times per week. Respondent shall obtain a sponsor, mentor, or group leader and
4 that individual shall provide quarterly reports to the Board Chair or designee attesting to
5 Respondent's attendance and participation.

6 10. While on probation, Respondent shall attend a minimum of 6 Mothers Against
7 Drunk Driving ("M.A.D.D.") meetings in person or an equivalent program. Respondent shall
8 provide a report to the Board Chair or designee substantiating their attendance at M.A.D.D.
9 meetings or an equivalent program.

10 **Biological Fluid Testing**

11 11. Within 10 days of the effective date of this Order, Respondent shall enroll in a
12 program that meets Board criteria for observed random biological fluid testing. The chemicals
13 tested shall be determined by the Board Chair or designee. Random testing shall be done at a
14 minimum of twice monthly and may be required more frequently as requested by the Board or
15 its designee. Respondent shall direct the Board-approved testing laboratory to provide a copy of
16 each test result to the Board. Respondent shall direct the Board-approved testing laboratory to
17 advise the Board or its designee within 7 days regarding any issue of noncompliance by
18 Respondent. Respondent shall notify the biological fluid testing laboratory and the Board, in
19 writing, of unavailability to test prior to an anticipated absence or if unable to provide a sample
20 due to illness. Respondent must submit in writing within 7 days of the missed specimen,
21 documentation from a treating physician who has personally evaluated Respondent on the day
22 of the requested screen that Respondent was not physically able to report to the laboratory for
23 biological fluid testing.

24 ***Failure to show for a random biological fluid test or failure to provide a random***
25 ***biological fluid sample on a day when a sample is requested by the Board, its designee***

1 **or the laboratory will be considered an admission of a positive urine screening.** The
2 following situations will also constitute **an admission of a positive urine screen:** submission of
3 a specimen where the integrity has been compromised as indicated by the presence of
4 adulterants, with determination made by laboratory personnel; submission of a sample that is
5 below acceptable volume or temperature to be tested; failure to provide written advance notice
6 of anticipated absence; and failure to provide written verification of illness from a physician
7 within 7 days of the missed specimen.

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

18 12. Respondent shall abstain completely from the personal use of the following
19 substances: opiates, foodstuffs containing poppy seeds, foodstuffs containing hemp products,
20 and herbal or health preparations containing derivatives of controlled substances. Respondent
21 is fully responsible for any and all ingested materials and their contents.

22 13. Respondent shall abstain completely from the personal use of alcohol or
23 controlled substances or possession of controlled substances, as defined in the State Controlled
24 Substances Act and Dangerous Drugs and Narcotics as defined by law or any drugs requiring a
25 prescription. Respondent shall abstain from the use of alcohol and all over-the-counter

1 medications except plain aspirin, acetaminophen, or ibuprofen.

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

15 15. If Respondent has a lawful prescription for a narcotic or mood-altering drug,
16 Respondent shall cause their prescribing provider to submit monthly reports to the Board by the
17 30th day of each month regarding the continued need for the prescribed narcotic or mood-
18 altering medications. The Board or its designee may, at any time, request the provider to
19 document the continued need for prescribed medications. Respondent shall keep a written
20 record of medications taken, including over the counter drugs, and produce such record upon
21 request by the Board or its designee.

22 **Early Release**

23 16. After completion of the stipulations set forth in this Consent Agreement, and upon
24 the therapist's recommendation, Respondent may request early release from the Consent
25 Agreement after 12 months.

1 and the period of probation shall be extended until the matter is final.

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

6 23. 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 24. 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 25. 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 26. 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 27. 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 met, the Board may conduct such further proceedings as it determines are appropriate to

1 address those matters.

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

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

6 30. This Consent Agreement shall be effective on the date of entry below.

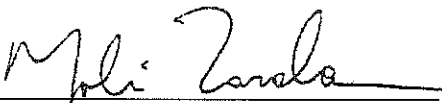
7 31. This Consent Agreement is conclusive evidence of the matters described herein
8 and may be considered by the Board in determining appropriate sanctions in the event a
9 subsequent violation occurs.

10
11 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

12 
13 Kathleen K. Exelby 08/25/2017
Date

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

15 Dated this 6th day of September, 2017.

16
17 By: 
18 TOBI ZAVALA, Executive Director
Arizona Board of Behavioral Health Examiners

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20
21 **ORIGINAL** of the foregoing filed
22 This 6th day of September, 2017 with:

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

COPY of the foregoing, mailed via Interagency Mail
This 6th day of September, 2017, to:

1 Marc Harris
Assistant Attorney General
2 1275 West Washington
Phoenix, Arizona 85007
3

COPY of the foregoing mailed via
4 Certified mail no. 7017145000086867578
This 10th day of September, 2017, to:

5 Kathleen K. Exelby
6 Address of Record
Respondent
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