

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

3 **In the Matter of:**

4 **Kelly C. McGuirk, LISAC-11106,**
5 **Licensed Independent Substance Abuse**
6 **Counselor,**
7 **In the State of Arizona.**

CASE NO. 2018-0019
 CONSENT AGREEMENT

8 **RESPONDENT**

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

15 **RECITALS**

16 Respondent understands and agrees that:

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

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

1 3. Respondent has the right to consult with an attorney prior to entering into this
2 Consent Agreement.

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

7 5. The findings contained in the Findings of Fact portion of this Consent Agreement
8 are conclusive evidence of the facts stated herein and may be used for purposes of determining
9 sanctions in any future disciplinary matter.

10 6. This Consent Agreement is subject to the Board's approval, and will be effective
11 only when the Board accepts it. In the event the Board in its discretion does not approve this
12 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,
13 nor shall it be relied upon or introduced in any disciplinary action by any party hereto, except
14 that Respondent agrees that should the Board reject this Consent Agreement and this case
15 proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced by its
16 review and discussion of this document or of any records relating thereto.

17 7. Respondent understands that once the Board approves and signs this Consent
18 Agreement, it is a public record that may be publicly disseminated as a formal action of the
19 Board, and that it shall be reported as required by law to the National Practitioner Data Bank.

20 8. Respondent further understands that any violation of this Consent Agreement
21 constitutes unprofessional conduct pursuant to A.R.S. § 32-3251(16)(n) and may result in
22 disciplinary action pursuant to A.R.S. § 32-3281.

23 9. The Board therefore retains jurisdiction over Respondent and may initiate
24 disciplinary action against Respondent if it determines that they have failed to comply with the
25 terms of this Consent Agreement or of the practice act.

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. LISAC-11106 for the practice of
4 substance abuse counseling in Arizona.

5 2. From 11/15 – 01/17, Respondent provided counseling to an adult male client
6 (“Client”).

7 3. During the period of time that Respondent was providing treatment to Client, they
8 exchanged over 1,155 text messages with each other.

9 4. Those communications included numerous examples of nonprofessional
10 interactions. For example:

11 a. 05/23/16:

- 12 • Respondent: “And started 30 day challenge inspired [by] you... Thanks!”
- 13 • Client: “Very good are you sore? I missed the gym yesterday because of
14 work so I did 3 days of yoga camp at the apartment.”
- 15 • Respondent: “Yes, I’m sore soooo out of shape”
- 16 • Respondent: “But according to my challenges I should have great arms
17 thighs butt and abs in 30 days (that’s what the girl in the picture has)”

18 b. 07/01/16:

- 19 • Client: “I’m so nervous to go to a yoga class...”
- 20 • Respondent: “That just made me smile big because you are so
21 adorable!...”
- 22 • Respondent: “I can’t wait to hear about this yoga class”
- 23 • Respondent: “And just FYI if I were not your ‘dr’ you would so be my
24 friend!!!”
- 25 • Respondent: “And as your friend I would go to yoga with you so you could

1 make fun of me and feel so good about your skills.”

2 c. 08/16/16:

- 3 • Respondent: “PS bought a beach house this weekend.”
- 4 • Client: “You VRBO to clients???”
- 5 • Respondent: “Absolutely”
- 6 • Client: “Good thing I won’t need you next summer you won’t be here. Lol.
- 7 Hawaii was kick ass”
- 8 • Respondent: “Right??? Phone if you did need me”
- 9 • Respondent: “You could send me Starbucks cards lol”
- 10 • Client: “You got it...I come out there we can do our session on the beach
- 11 and both write it off. Then wine after”
- 12 • Respondent: “A plan”

13 5. In response to this matter, Respondent indicated the following:

- 14 a. At the time, Respondent didn’t see any issue with the text messages with
- 15 Client, but after reviewing them now, she can see how they can appear too
- 16 friendly in a clinical relationship, especially without any context behind it.
- 17 b. Respondent can see how some of her texts can look bizarre or over-friendly
- 18 but her intent was only to support Client.
- 19 c. Respondent agrees that there may have been some blurred lines, but she
- 20 does not feel that she crossed any ethical boundaries.

21 6. As a licensed independent substance abuse counselor, Respondent is prohibited

22 from providing any type of therapy services unrelated to substance abuse, chemical

23 dependency or related problems.

24 7. From approximately 05/16 – 08/16, Respondent acknowledges providing

25 marriage and family therapy to Client and his wife (“Wife”).

1 8. In review of their marriage and family counseling records, Respondent
2 documented the following:

3 a. 05/16/16:

- 4 • Client and Wife both discussed their concerns related to the marriage.
- 5 • Client sated that he was unhappy being separated while Wife discussed
6 her desire for communication assistance and co-parenting coaching.
- 7 • Plan: Plan a date night and a work meeting with a preplanned agenda to
8 discuss.

9 b. 08/24/16:

- 10 • Wife stated that she has been seeing someone and he makes her realize
11 what Client doesn't give her.
- 12 • Client had an extremely emotional response to this information and
13 walked out of session.
- 14 • They cried, yelled, and had difficultly remaining calm to promote an
15 environment to discuss feelings.

16 9. During the course of Client's treatment, Respondent's records reflect that she
17 transitioned from individual therapist, to marriage and family therapist, back to individual
18 therapist.

19 10. When transitioning her roles, Respondent did not document any information that
20 explained her role change, and she did not update Client's treatment goals.

21 11. Throughout Client's entire course of treatment which lasted approximately 14
22 months, Respondent failed to generate a valid and signed Treatment Plan.

23 12. Respondent's Consent for Treatment form failed to include all required elements.

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1 **CONCLUSIONS OF LAW**

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

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

8 3. The conduct and circumstances described in the Findings of Fact constitute a
9 violation of A.R.S. § 32-3251(16)(ii), violating any federal or state law, rule or regulation
10 applicable to the practice of behavioral health.

11 4. The conduct and circumstances described in the Findings of Fact constitute a
12 violation of A.R.S. § 32-3251(16)(q), failing or refusing to maintain adequate records of
13 behavioral health services provided to a client.

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 license, LISAC-11106, will be placed on probation for 24 months,
18 effective from the date of entry as signed below.

19 2. Respondent shall not practice under their license, LISAC-11106, unless they are
20 fully compliant with all terms and conditions in this Consent Agreement. If, for any reason,
21 Respondent is unable to comply with the terms and conditions of this Consent Agreement, they
22 shall immediately notify the Board in writing and shall not practice under their license until they
23 submit a written request to the Board to re-commence compliance with this Consent
24 Agreement. All such requests shall be pre-approved by the Board Chair or designee.

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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 complete 6 clock
8 hours of the NASW Staying Out of Trouble continuing education course or an equivalent course
9 addressing current behavioral health documentation standards in Arizona. All required
10 continuing education shall be pre-approved by the Board Chair or designee. Upon completion,
11 Respondent shall submit a certificate of completion of the required continuing education.

12 5. In addition to the continuing education requirements of A.R.S. § 32-3273, within
13 12 months of the effective date of this Consent Agreement, Respondent shall complete 6 clock
14 hours of continuing education addressing boundaries. All required continuing education shall be
15 pre-approved by the Board Chair or designee. Upon completion, Respondent shall submit a
16 certificate of completion of the required continuing education.

17 6. In addition to the continuing education requirements of A.R.S. § 32-3273, within
18 12 months of the effective date of this Consent Agreement, Respondent shall take and pass a
19 three semester credit hour graduate level behavioral health ethics course from an accredited
20 college or university, pre-approved by the Board Chair or designee. Upon completion,
21 Respondent shall submit to the Board an official transcript establishing completion of the
22 required course.

23 **Practice Restriction**

24 7. While on probation, Respondent is prohibited from providing marriage and family
25 therapy until they have completed all required continuing education stipulated in this Consent

1 Agreement.

2 **Clinical Supervision**

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

12 **Focus and Frequency of Clinical Supervision**

13 9. The focus of the supervision shall relate to Arizona Department of Health
14 Services rules and regulations, consistency with rules, scope of practice, and documentation.
15 Respondent shall meet individually in person with the supervisor for a minimum of one hour
16 once monthly.

17 **Reports**

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

- 22 a. Dates of each clinical supervision session.
23 b. A comprehensive description of issues discussed during supervision
24 sessions.

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

4 12. After Respondent's probationary period, the supervisor shall submit a final
5 summary report for review and approval by the Board Chair or designee. The final report shall
6 also contain a recommendation as to whether the Respondent should be released from this
7 Consent Agreement.

8 Therapy

9 13. During the period of probation, Respondent shall attend therapy with a masters
10 or higher level behavioral health professional licensed at the independent level. Within 30 days
11 of the date of this Consent Agreement, Respondent shall submit the name of their therapist and
12 the therapist's curriculum vitae for pre-approval by the Board Chair or designee. Also within 30
13 days of the date of this Consent Agreement, the therapist shall submit a letter addressing why
14 they should be approved, acknowledging that they have reviewed the Consent Agreement and
15 include the results of an initial assessment and a treatment plan regarding the proposed
16 treatment of Respondent.

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

20 Focus and Frequency of Therapy

21 15. The focus of the therapy shall relate to boundaries, countertransference, and
22 self-care. Respondent shall meet in person with the therapist twice monthly for 6 months.
23 Following the first 6 months, the frequency shall be at the recommendation of the therapist.

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1 **Reports**

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

10 **Change of Therapist**

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

18 **GENERAL PROVISIONS**

19 **Provision of Clinical Supervision**

20 18. Respondent shall not provide clinical supervision while subject to this Consent
21 Agreement.

22 **Civil Penalty**

23 19. Subject to the provisions set forth in paragraph 20, the Board imposes a civil
24 penalty against the Respondent in the amount of \$1,000.00.

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

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

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

20 23. If Respondent currently sees clients in their own private practice, and obtains any
21 other type of behavioral health position, either as an employee or independent contractor, where
22 they provide behavioral health services to clients of another individual or agency, they shall
23 comply with requirements set forth in paragraphs 24 through 26 below.

24 24. Within 10 days of the effective date of this Order, if Respondent is working in a
25 position where Respondent provides any type of behavioral health related services or works in a

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

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

17 26. If, during the period of Respondent's probation, Respondent changes
18 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
19 extended leave of absence for whatever reason that may impact their ability to timely comply
20 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform
21 the Board of their change of employment status. After the change and within 10 days of
22 accepting employment in a position where Respondent provides any type of behavioral health
23 related services or in a setting where any type of behavioral health, health care, or social
24 services are provided, Respondent shall provide the Board Chair or designee a written
25 statement providing the contact information of their new employer(s) and a signed statement

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

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

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

20 29. Respondent shall bear all costs relating to probation terms required in this
21 Consent Agreement.

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

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

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1 and may be considered by the Board in determining appropriate sanctions in the event a
2 subsequent violation occurs.

3
4 **PROFESSIONAL ACCEPTS, SIGNS AND DATES THIS CONSENT AGREEMENT**

5 Kelly C. McGuirk
6 Kelly C. McGuirk

12-14-17
Date

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

8 Dated this 18th day of December, 2017.

9
10 By: Tobi Zavala
11 TOBI ZAVALA, Executive Director
12 Arizona Board of Behavioral Health Examiners

13 **ORIGINAL** of the foregoing filed
14 This 18th day of December, 2017 with:

15 Arizona Board of Behavioral Health Examiners
16 3443 N. Central Ave., Suite 1700
17 Phoenix, AZ 85012

18 **COPY** of the foregoing mailed via Interagency Mail
19 This 18th day of December, 2017, to:

20 Marc Harris
21 Assistant Attorney General
22 1275 West Washington
23 Phoenix, Arizona 85007

24 **COPY** of the foregoing mailed via
25 Certified mail no. 9489009000276039/43600
This 18th day of December, 2017, to:

Kelly C. McGuirk
Address of Record
Respondent