

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

3 **In the Matter of:**

4 **Kevin M. Potter, Applicant for**
5 **Licensed Associate Substance Abuse**
6 **Counselor,**
7 **In the State of Arizona.**

8 **RESPONDENT**

CASE NO. 2024-0148

CONSENT AGREEMENT
FOR ISSUANCE OF LICENSE

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), Kevin M. Potter (“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.

25 ...

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 between only Respondent and the Board for
9 the final disposition of this matter and may be used for purposes of determining sanctions in any
10 future disciplinary matter.

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13 Consent Agreement, this Consent Agreement is withdrawn and shall be of no evidentiary value,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

18 7. Respondent acknowledges and agrees that the acceptance of this Consent
19 Agreement is solely to settle this Board matter and does not preclude the Board from instituting
20 other proceedings as may be appropriate now or in the future. Furthermore, and
21 notwithstanding any language in this Consent Agreement, this Consent Agreement does not
22 preclude in any way any other state agency or officer or political subdivision of this state from
23 instituting proceedings, investigating claims, or taking legal action as may be appropriate now or
24 in the future relating to this matter or other matters concerning Respondent, including but not
25 limited to violations of Arizona's Consumer Fraud Act. Respondent acknowledges that, other

1 than with respect to the Board, this Consent Agreement makes no representations, implied or
2 otherwise, about the views or intended actions of any other state agency or officer or political
3 subdivision of the state relating to this matter or other matters concerning Respondent.

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

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

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

13 The Board issues the following Findings of Fact, Conclusions of Law and Order:

14 **FINDINGS OF FACT**

15 1. Respondent is an applicant for licensure for the practice substance abuse
16 counseling in the State of Arizona.

17 2. On 11/30/21, Respondent was arrested for driving under the influence.

18 3. Respondent's breathalyzer test result was measured at .276% approximately one
19 hour after he was pulled over.

20 4. Respondent acknowledged having a couple beers approximately three hours
21 prior.

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 completion, Respondent shall submit to the Board an official transcript establishing completion
2 of the required course.

3 **Recovery Program**

4 6. While on probation, Respondent shall attend a minimum of 3 Mothers Against
5 Drunk Driving ("M.A.D.D.") meetings in person or an equivalent program. Respondent shall
6 provide a report to the Board Chair or designee substantiating his/her attendance at M.A.D.D.
7 meetings or equivalent program.

8 **Early Release**

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

12 **GENERAL PROVISIONS**

13 **Provision of Clinical Supervision**

14 8. Respondent shall not provide clinical supervision to associate level licensees
15 accruing and submitting hours towards independent licensure while subject to this Consent
16 Agreement.

17 **Civil Penalty**

18 9. Subject to the provisions set forth in paragraph 10, the Board imposes a civil
19 penalty against the Respondent in the amount of \$1,000.00.

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

3 11. Within 10 days of being notified of the lifting of the stay, Respondent may request
4 that the matter be reviewed by the Board for the limited purpose of determining whether the
5 automatic lifting of the stay was supported by clear and convincing evidence. If the Board
6 receives the written request within 10 days or less of the next 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. The Board's decision on this matter shall not be subject to further
9 review.

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

15 13. If Respondent currently sees clients in their own private practice, and obtains any
16 other type of behavioral health position, either as an employee or independent contractor, where
17 they provide behavioral health services to clients of another individual or agency, they shall
18 comply with requirements set forth in paragraphs 14 through 16 below.

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

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

13 16. If, during the period of Respondent's probation, Respondent changes
14 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
15 extended leave of absence for whatever reason that may impact their ability to timely comply
16 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform
17 the Board of their change of employment status. After the change and within 10 days of
18 accepting employment in a position where Respondent provides any type of behavioral health
19 related services or in a setting where any type of behavioral health, health care, or social
20 services are provided, Respondent shall provide the Board Chair or designee a written
21 statement providing the contact information of their new employer(s) and a signed statement
22 from Respondent's new employer(s) confirming Respondent provided the employer(s) with a
23 copy of this Consent Agreement. If Respondent does not provide the employer's statement to
24 the Board within 10 days, as required, Respondent's failure to provide the required statement to

1 the Board shall be deemed a violation of A.R.S. § 32-3251(16)(n) and the Board will provide
2 Respondent's employer(s) with a copy of the Consent Agreement.

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

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

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

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

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

22 22. This Consent Agreement is conclusive evidence of the matters described herein
23 and may be considered by the Board in determining appropriate sanctions in the event a
24 subsequent violation occurs.

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