

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

2 **In the Matter of:**

3 **Nicole M. O'Hare, LPC-18730,**
4 **Licensed Professional Counselor,**
5 **In the State of Arizona.**

6 **RESPONDENT**

CASE NO. 2019-0150

**RELEASE FROM CONSENT AGREEMENT
AND ORDER**

7 The Board received a request from Respondent to release them from the terms and
8 conditions of the Consent Agreement and Order dated July 31st, 2019. After consideration, the
9 Board voted to release Respondent from the terms and conditions of the Consent Agreement
10 and Order dated July 31st, 2019.

11 **ORDER**

12 **GOOD CAUSE APPEARING, IT IS THEREFORE ORDERED THAT:**

13 Respondent is hereby released from all terms and conditions of the Consent Agreement
14 and Order dated July 31st, 2019.

15 By:



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

Sep 14, 2020

Date

18 **ORIGINAL** of the foregoing filed
19 with:

Sep 14, 2020

20 Arizona Board of Behavioral Health Examiners
21 1740 West Adams Street, Suite 3600
22 Phoenix, AZ 85007

23 **EXECUTED COPY** of the foregoing sent electronically
24 to:

Sep 14, 2020

25 Nicole M. O'Hare
Address of Record
Respondent

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

In the Matter of:

**Nicole M. O'Hare, LAC-16396,
Licensed Associate Counselor,
In the State of Arizona.**

RESPONDENT

**CASE NO. 2019-0150
CONSENT AGREEMENT**

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

RECITALS

Respondent understands and agrees that:

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

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

3. Respondent has the right to consult with an attorney prior to entering into this 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 between only Respondent and the Board for
7 the final disposition of this matter and may be used for purposes of determining sanctions in any
8 future disciplinary matter.

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

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

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

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

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. LAC-16396 for the practice of
4 counseling in Arizona.

5 2. On 05/05/18, Respondent was arrested and charged with Extreme DUI and
6 Resisting Arrest/Passive Resistance.

7 3 According to the police records:

8 a. Respondent was swerving badly and was driving at erratic speeds of 45-70
9 mph.

10 b. Respondent had red bloodshot and water eyes, a strong odor of intoxicating
11 beverage, slurred speech, she was swaying from left to right and front to
12 back, stumbling when walking, and had a dazed expression.

13 c. Respondent refused a breathalyzer test.

14 d. Respondent refused to participate in a blood draw.

15 e. Upon a search of Respondent's vehicle, 3 miniature 50mL bottles of vodka
16 were found on the floorboard in a grocery bag.

17 f. A search warrant for Respondent's blood test was obtained due to her
18 refusal.

19 g. Due to Respondent's refusal to cooperate, the police detention staff assisted
20 by securing her to the restraint chair by her arms and legs.

21 h. Respondent did not participate in any interviews with police.

22 4. Respondent's blood draw measured her Blood Alcohol Content at 0.274.

23 5. On 08/27/18, Respondent pled guilty to Extreme DUI.

24 6. Pursuant to A.R.S. § 32-3208, Respondent was required to report her criminal
25 charges within 10 days.

1 7. On 09/10/18, approximately 4 months later, Respondent self-reported her
2 criminal charges to the Board.

3 **CONCLUSIONS OF LAW**

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

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

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 of Criminal Charges.

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, LAC-16396, will be placed on probation for 12 months,
18 effective from the date of entry as signed below.

19 2. Respondent shall not practice under their license, LAC-16396, 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.

25 ...

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 take and pass a
8 three semester credit hour graduate level course in substance abuse disorders from a regionally
9 accredited college or university, pre-approved by the Board Chair or designee. Upon
10 completion, Respondent shall submit to the Board an official transcript establishing completion
11 of the required course.

12 **Clinical Supervision**

13 5. While on probation, Respondent shall submit to clinical supervision for 12 months
14 by a masters or higher level behavioral health professional licensed at the independent level.
15 Within 30 days of the date of this Consent Agreement, Respondent shall submit the name of a
16 clinical supervisor for pre-approval by the Board Chair or designee. Also within 30 days of the
17 date of this Consent Agreement, the clinical supervisor shall submit a letter disclosing their prior
18 relationship to Respondent. In that letter, the clinical supervisor must address why they should
19 be approved, acknowledge that they have reviewed the Consent Agreement and include the
20 results of an initial assessment and a supervision plan regarding the proposed supervision of
21 Respondent. The letter from the supervisor shall be submitted to the Board.

22 **Focus and Frequency of Clinical Supervision**

23 6. The focus of the supervision shall relate to insight, countertransference, personal
24 accountability, and Board statutes and regulations. Respondent shall meet individually in person
25 with the clinical supervisor twice monthly.

1 **Reports**

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

- 6 a. Dates of each clinical supervision session.
7 b. A comprehensive description of issues discussed during supervision
8 sessions.

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

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

16 **Change of Clinical Supervisor During Probation**

17 10. If, during the period of Respondent's probation, the clinical supervisor determines
18 that they cannot continue as the clinical supervisor, they shall notify the Board within 10 days of
19 the end of supervision and provide the Board with an interim final report. Respondent shall
20 advise the Board Chair or designee within 30 days of cessation of clinical supervision by the
21 approved clinical supervisor and provide the name of a new proposed clinical supervisor. The
22 proposed clinical supervisor shall provide the same documentation to the Board as was required
23 of the initial clinical supervisor.

24 ...

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1 **Therapy**

2 11. During the period of probation, Respondent shall attend therapy for 12 months
3 with a dually licensed behavioral health professional who is licensed as Licensed Independent
4 Substance Abuse Counselor and another independent level license. Within 30 days of the date
5 of this Consent Agreement, Respondent shall submit the name of their therapist and the
6 therapist's curriculum vitae for pre-approval by the Board Chair or designee. Also within 30 days
7 of the date of this Consent Agreement, the therapist shall submit a letter addressing why they
8 should be approved, acknowledging that they have reviewed the Consent Agreement and
9 include the results of an initial assessment and a treatment plan regarding the proposed
10 treatment of Respondent.

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

14 **Focus and Frequency of Therapy**

15 13. The focus of the therapy shall relate to substance use, triggers, cravings, relapse
16 prevention, self-care, coping skills, and issues identified in the Board's investigative report.
17 Respondent shall meet in person with the therapist once weekly for 3 months. Following the
18 initial 3 months, the frequency may be at the recommendation of the therapist.

19 **Reports**

20 14. Once approved, the therapist shall submit quarterly reports and a final summary
21 report to the Board for review and approval. The quarterly reports shall include issues presented
22 in this Consent Agreement that need to be reported and the therapist shall notify the Board if
23 more frequent therapy is needed. The reports shall address Respondent's current mental health
24 status, medications prescribed, if any, treatment recommendation, and shall report if, in their
25 professional opinion, Respondent becomes unable to practice psychotherapy safely and

1 competently. The final report shall also contain a recommendation as to whether the
2 Respondent should be released from this Consent Agreement.

3 **Change of Therapist**

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

11 **Recovery Program**

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

16 **GENERAL PROVISIONS**

17 **Provision of Clinical Supervision**

18 17. Respondent shall not provide clinical supervision while subject to this Consent
19 Agreement.

20 **Civil Penalty**

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

23 19. Respondent's payment of the civil penalty shall be stayed so long as Respondent
24 remains compliant with the terms of this Consent Agreement. If Board staff determines that
25 Respondent is noncompliant with the terms of this Consent Agreement in any respect, with the

1 exception of the tolling provision under paragraph 3, the stay of the civil penalty payment shall
2 be automatically lifted and payment of the civil penalty shall be made by certified check or
3 money order payable to the Board within 30 days after being notified in writing of the lifting of
4 the stay.

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

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

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

21 23. Within 10 days of the effective date of this Order, if Respondent is working in a
22 position where Respondent provides any type of behavioral health related services or works in a
23 setting where any type of behavioral health, health care, or social services are provided,
24 Respondent shall provide the Board Chair or designee with a signed statement from
25 Respondent's employer(s) confirming Respondent provided the employer(s) with a copy of this

1 Consent Agreement. If Respondent does not provide the employer's statement to the Board
2 within 10 days of the effective date, the Board will provide Respondent's employer(s) with a
3 copy of the Consent Agreement.

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

14 25. If, during the period of Respondent's probation, Respondent changes
15 employment, resigns, is involuntarily terminated, resigns in lieu of termination, or goes on
16 extended leave of absence for whatever reason that may impact their ability to timely comply
17 with the terms of probation, Respondent shall, within 10 days of the aforementioned acts, inform
18 the Board of their change of employment status. After the change and within 10 days of
19 accepting employment in a position where Respondent provides any type of behavioral health
20 related services or in a setting where any type of behavioral health, health care, or social
21 services are provided, Respondent shall provide the Board Chair or designee a written
22 statement providing the contact information of their new employer(s) and a signed statement
23 from Respondent's new employer(s) confirming Respondent provided the employer(s) with a
24 copy of this Consent Agreement. If Respondent does not provide the employer's statement to
25 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 26. 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 27. 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 28. Respondent shall bear all costs relating to probation terms required in this
18 Consent Agreement.

19 29. 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 30. This Consent Agreement shall be effective on the date of entry below.

22 31. 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.

25 ...

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

2 
3 Nicole M. O'Hare

Jul 30, 2019
Date

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

5 By: Tobi Zavala
6 Tobi Zavala (Jul 31, 2019)
7 TOBI ZAVALA, Executive Director
8 Arizona Board of Behavioral Health Examiners

Jul 31, 2019
Date

9 **ORIGINAL** of the foregoing filed Jul 31, 2019
with:

10 Arizona Board of Behavioral Health Examiners
11 1740 West Adams Street, Suite 3600
Phoenix, AZ 85007

12 **EXECUTED COPY** of the foregoing sent electronically Jul 31, 2019
to:

14 Marc Harris
15 Assistant Attorney General
2005 North Central Avenue
Phoenix, AZ 85004

16 Nicole M. O'Hare
17 Address of Record
Respondent