

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

3 **In the Matter of:**

Docket No. 2024F-0161-BHE

4 **ARTURO T. MORALES**
5 LAC Applicant for licensure as a
6 Licensed Associate Counselor
7 In the State of Arizona,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER OF DENIAL
OF LICENSURE**

8 **Appellant**

9 This matter came before Administrative Law Judge (“ALJ”) Velva Moses-Thompson at the
10 Office of Administrative Hearings on April 29, 2024 for a hearing regarding Appellant’s denial
11 of licensure. On May 20, 2024, the ALJ issued a recommended decision affirming the denial.

12 At its regularly scheduled monthly meeting held on June 14, 2024, the Board
13 considered the ALJ’s recommended decision. Assistant Attorney General Scott Donald was
14 present to provide the Board with independent legal advice. Neither Appellant nor counsel for
15 Appellant appeared; Assistant Attorney General Mona Baskin appeared telephonically on behalf
16 of the State. After hearing from the State and discussing the recommended decision, the Board
17 voted to adopt the ALJ’s Findings of Fact and Conclusions of Law with the following non-
18 substantive technical modification made to correct a scrivener’s error: “the Administrative Law
19 Judge concludes that Respondent has failed to establish by Board has established by clear and
20 convincing evidence...” was corrected to read “the Administrative Law Judge concludes that
21 Respondent has failed to establish by clear and convincing evidence...”
22

23 Based upon the ALJ’s Recommended Decision, attached and incorporated by reference, the
24 administrative record in this matter, and modifications adopted by the Board, the Board issues the
25 following Order:

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FINDINGS OF FACT

The Board adopts the Findings of Fact set forth in the ALJ's Recommended Decision, in their entirety.

CONCLUSIONS OF LAW

The Board adopts Conclusions of Law, paragraphs 1 and 2, as set forth in the ALJ's Recommended Decision. Paragraph 3 of the Conclusions of Law is modified to the following:

“Based on findings of fact 1 through 17, the Administrative Law Judge concludes that Respondent has failed to establish by clear and convincing evidence that he meets the minimum requirements for licensure based on violations of A.R.S. §§ 32-3275(A)(5), (A)(6), and A.R.S. §32-3251(16)(l).”

ORDER

Based on the Findings of Fact and Conclusions of Law, the Board adopts the recommended Order in the Administrative Law Judge's Decision and orders that Appellant's application for licensure be DENIED.

Right to Petition for Rehearing or Review

Appellant is hereby notified that he has the right to file a motion for rehearing or review. Pursuant to A.R.S. § 41-1092.09(B) the motion for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order, as “failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.” A.R.S. § 41-1092.09(B). Service of this Order is defined as five (5) calendar days after mailing. A.R.S. § 41-1092.09(C).

...

...

1 If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-
2 five (35) days after it is mailed to Appellant. Appellant is further notified that the filing of a
3 motion for rehearing or review is required to preserve any rights of appeal to Superior Court.

4 Dated this 21st of June 2024

5 

6 Tobi Zavala, Executive Director
7 Arizona Board of Behavioral Health Examiners

8 **ORIGINAL** of the foregoing filed
9 This 21st day of June 2024, with:

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

13 **COPY** of the foregoing mailed via Certified Mail No. 9489 0090 0027 6556 1850 44
14 This 21st day of June 2024, to:

15 Arturo T. Morales
16 Address of Record
17 Respondent

18 **COPY** of the foregoing emailed this 21st day of June 2024, to:

19 

20 mona.baskin@azag.gov

21 scott.donald@azag.gov

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of:
4 Arturo Morales, Licensed Associate
5 Counselor Appellant. Case no. 2023-0161
6 Appellant.

No. 2024F-0161-BHE
**ADMINISTRATIVE LAW JUDGE
DECISION**

7 **HEARING:** April 29, 2024

8 **APPEARANCES:** Bretton Barber, Esq. represented Appellant Arturo Morales.
9 Assistant Attorney General Mona Baskin represented the Arizona Behavioral Health
10 Examiners Board (Board).

11 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

12 **EXHIBITS ADMITTED INTO EVIDENCE:** Board's Exhibits 1 through 7.

13
14 **FINDINGS OF FACT**

15 1. On November 14, 2022, the Board received Appellant's Licensed
16 Associate Counselor (LAC) application where he answered affirmative to multiple
17 background questions.

18 2. Appellant answered yes to the two questions regarding previous
19 disciplinary action against a license or certificate and surrendering a license or
20 certificate.

21 3. Appellant represented in his LAC application that he surrendered his CNA
22 license for 5 years due to accusations of inappropriate behavior concerning a
23 relationship with a patient (Patient).

24 4. Appellant also disclosed three previous terminations from behavioral
25 entities.

26 5. The executed Consent for Entry of Voluntary Surrender with the Arizona
27 Board of Nursing included the following in part:

28 a. Findings of Facts:
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- From 12/97 – 01/01, Appellant was employed as a certified nursing assistant at Hospital.
- On or about 01/14/01, Patient presented to the ER with a drug overdose and Patient’s husband reported to management that Appellant had a personal and sexual relationship with Patient while she was in the psychiatric unit in or around 05/00 or 06/00.
- On 01/15/01, Appellant was suspended pending an investigation and on 01/16/01, Appellant met with management and admitted to giving Patient his personal pager number.
- Appellant also admitted he washed Patient alone in the shower 1 to 5 times because she was in a vegetative state.
- On or about 01/17/01, management interviewed the unit’s charge nurse who reported they never told Appellant to bathe Patient and Patient was never in a vegetative state; management viewed Patient’s records which showed she was independent with her bathing.
- On or about 01/19/01, Patient reported during her 05/00 admission to Hospital, Appellant entered the shower room the first day and told Patient she had a lovely body.
- Patient reported the same day, Appellant kissed her and the second day Appellant kissed her and they exchanged “I love you.”
- Patient reported the third day Appellant asked to see Patient’s breasts, the fourth day they planned to meet in the shower room, and the fifth day they had sexual intercourse in the shower room.
- Patient attempted to contact Appellant after her discharge but he rejected her and Patient reported falling into a depression and resumed taking pills and consuming alcohol.
- Appellant told Patient that his conduct was inappropriate and feared losing his job.

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- On or about 01/26/01, Appellant met with Hospital management and he admitted having a sexual relationship with Patient.
- On or about 01/29/01, Appellant was terminated from Hospital.

b. Conclusions of Law:

- Appellant admits to the Findings of Facts and Conclusions of Law.
- Appellant understands he has an opportunity to request a hearing and declines to do so and agrees to this Order and waives all rights to a hearing, rehearing, appeal, or judicial review relating to this Order.
- Appellant understands that the admissions in the Findings of Facts are conclusive evidence of a violation of the Nurse Practice Act and may be used for purposes of determining sanctions in any future disciplinary matter.
- Appellant understands the right to consult legal counsel prior to entering into this Consent Agreement and such consultation has either been obtained or waived.

6. On March 14, 2001, the Arizona State Nursing Board issued an Order that provided as follows:

- The board accepts the Voluntary Surrender of Appellant's certified nursing assistant certificate and the Order will be filed with the board and made public.
- It is ordered that Appellant may apply for reinstatement of said certificate after a period of 5 years.

7. On March 14, 2001, Appellant signed the Voluntary Surrender and was executed the same day.

8. On February 16, 2023, the Board interviewed Appellant. Appellant made the following representations during the interview:

- Appellant admitted to having sexual intercourse with Patient but denied that it was something that occurred more than once.

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- Appellant did not read the Nursing Board surrender document since he knew he had done something wrong.
- Appellant represents he was told he did not need legal representation regarding the surrender of his license.
- Appellant knew what he did was wrong and never attempted to consult with anyone professionally.
- Appellant engaged in counseling services with his pastor for roughly 5 years which was prompted by the surrender of his CNA license.
- Appellant has since read the Consent Agreement for the surrender of his CNA license thoroughly and understands he waived his right to counsel and admitted to all of the allegations in the document.

9. Appellant signed a document surrendering his CNA license without thoroughly reading it.

10. The document Appellant signed indicated he knew he had a right to legal counsel and was waiving that right.

11. The Nursing Board documents indicated Patient was a psychiatric patient, increasing Patient's vulnerability.

12. Appellant inappropriately engaged in sexual conduct with Patient while she was an active patient at Hospital, violating numerous Nursing Board rules and statutes.

13. On June 12, 2023, the Board issued a notice denying Appellant's LAC application.

14. Appellant requested a hearing regarding the denial.

15. A hearing was held on April 29, 2024.

16. At hearing, Complainant testified on behalf of himself. The Board presented the testimony of its Investigations Manager, Jarett Carver.

17. At hearing, Appellant did not dispute the findings of the Board. Appellant explained that he is a changed person. Appellant testified to the effect that he can now

1 see that Patient was a victim of his actions. Appellant stated that after the incident with
2 Patient, he received counseling from his Pastor at his church. However, Appellant
3 provided no other testimonial or written evidence to demonstrate that he meets the
4 minimum requirements for licensure.

5 CONCLUSIONS OF LAW

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

9 2. Appellant has the burden of proof, with the standard of proof being clear
10 and convincing evidence. A.R.S. §32-3281(X). Clear and convincing evidence is a
11 "heightened standard of proof that indicates that the thing is highly or reasonably certain."
12 Kent K. v. Bobby M., 210 Ariz. 279, 284-85, ¶25 (2005)(quoting BLACK'S LAW
13 DICTIONARY 7th ed.); see also BLACK'S LAW DICTIONARY 674 (10th ed. 2014)(clear
14 and convincing evidence is "[e]vidence indicating that the thing to be proved is highly
15 probable or reasonably certain.").

16 3. Based on findings of fact 1 through 17, the Administrative Law Judge
17 concludes that Respondent has failed to establish by Board has established by clear and
18 convincing evidence that he meets the minimum requirements for licensure based on
19 violations of A.R.S. §§ 32-3275(A)(5),(A)(6), and A.R.S. §32-3251(16)(1).

20 RECOMMENDED ORDER

21 It is recommended the Board's denial of Appellant application for licensure as a
22 licensed associate counselor be affirmed.

23 ***Pursuant to A.R.S. § 41-1092.08(I), the licensee may accept the***
24 ***Administrative Law Judge Decision by advising the Office of Administrative***
25 ***Hearings in writing not more than ten (10) days after receiving the decision. If the***
26 ***licensee accepts the Administrative Law Judge Decision, the decision shall be***
certified as the final decision by the Office of Administrative Hearings.

27 ***In the event of certification of the Administrative Law Judge Decision by the***
28 ***Director of the Office of Administrative Hearings, the effective date of the Order will***
29 ***be forty (40) days from the date of that certification.***

30 Done this day, May 20, 2024.

/s/ Velva Moses-Thompson
Administrative Law Judge

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Transmitted by either mail, e-mail, or facsimile to:

Tobi Zavala, Executive Director
Board of Behavioral Health Examiners

Arturo Morales
[Redacted]

Bretton H. Barber, Esq.
Barber Law Group
Barber Law Group, PLLC
[Redacted]

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By: OAH Staff



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KATIE HOBBS
Governor

TOBI ZAVALA
Executive Director

June 12, 2023

REVISED

Arturo T. Morales
[REDACTED]

Dear Mr. Morales:

On June 9, 2023, the Arizona Board of Behavioral Health Examiners (“Board”) reviewed your application for licensure as a licensed associate counselor and determined that you are not eligible for licensure pursuant to A.R.S. § 32-3275(A)(6). Specifically, the Board found that you engaged in conduct that had you been licensed would have constituted grounds for disciplinary action pursuant to A.R.S. § 32-3275(A)(5). The Board determined that the disciplinary action invoked the following violations that were based upon the conduct referenced thereafter:

1. A.R.S. § 32-3251(16)(I), engaging in any conduct, practice or condition that impairs the ability of the licensee to safely and competently practice the licensee’s profession.

These violations were based on the following findings:

1. On 11/14/22, the Board received Applicant’s LAC application where he answered affirmative to multiple background questions.
2. Applicant answered yes to the two questions regarding previous disciplinary action against a license or certificate and surrendering a license or certificate.
3. Applicant represented in his LAC application that he surrendered his CNA license for 5 years due to accusations of inappropriate behavior concerning a relationship with a patient (“Patient”).
4. Applicant also disclosed 3 previous terminations from behavioral entities.
5. The executed Consent for Entry of Voluntary Surrender with the Arizona Board of Nursing included the following in part:
 - a. Findings of Facts:
 - From 12/97 – 01/01, Applicant was employed as a certified nursing assistant at Hospital.
 - On or about 01/14/01, Patient presented to the ER with a drug overdose and Patient’s husband reported to management that Applicant had a personal and sexual relationship with Patient while she was in the psychiatric unit in or around 05/00 or 06/00.
 - On 01/15/01, Applicant was suspended pending an investigation and on 01/16/01, Applicant met with management and admitted to giving Patient his personal pager number.
 - Applicant also admitted he washed Patient alone in the shower 1 to 5 times because she was in a vegetative state.
 - On or about 01/17/01, management interviewed the unit’s charge nurse who reported they never told Applicant to bathe Patient and Patient was never in a vegetative state; management viewed Patient’s records which showed she was independent with her bathing.
 - On or about 01/19/01, Patient reported during her 05/00 admission to Hospital, Applicant entered the shower room the first day and told Patient she had a lovely body.
 - Patient reported the same day, Applicant kissed her and the second day Applicant kissed her and they exchanged “I love you.”
 - Patient reported the third day Applicant asked to see Patient’s breasts, the fourth day they

- planned to meet in the shower room, and the fifth day they had sexual intercourse in the shower room.
- Patient attempted to contact Applicant after her discharge but he rejected her and Patient reported falling into a depression and resumed taking pills and consuming alcohol.
 - Applicant told Patient that his conduct was inappropriate and feared losing his job.
 - On or about 01/26/01, Applicant met with Hospital management and he admitted having a sexual relationship with Patient.
 - On or about 01/29/01, Applicant was terminated from Hospital.
- b. Conclusions of Law:
- Applicant admits to the Findings of Facts and Conclusions of Law.
 - Applicant understands he has an opportunity to request a hearing and declines to do so and agrees to this Order and waives all rights to a hearing, rehearing, appeal, or judicial review relating to this Order.
 - Applicant understands that the admissions in the Findings of Facts are conclusive evidence of a violation of the Nurse Practice Act and may be used for purposes of determining sanctions in any future disciplinary matter.
 - Applicant understands the right to consult legal counsel prior to entering into this Consent Agreement and such consultation has either been obtained or waived.
- c. Order:
- The board accepts the Voluntary Surrender of Applicant's certified nursing assistant certificate and the Order will be filed with the board and made public.
 - It is ordered that Applicant may apply for reinstatement of said certificate after a period of 5 years.
- d. On 03/14/01, Applicant signed the Voluntary Surrender and was executed the same day.
6. Applicant represented the following during an investigative interview:
- a. Applicant admitted to having sexual intercourse with Patient but denied that it was something that occurred more than once.
 - b. Applicant did not read the Nursing Board surrender document since he knew he had done something wrong.
 - c. Applicant represents he was told he did not need legal representation regarding the surrender of his license.
 - d. Applicant knew what he did was wrong and never attempted to consult with anyone professionally.
 - e. Applicant engaged in counseling services with his pastor for roughly 5 years which was prompted by the surrender of his CNA license.
 - f. Applicant has since read the Consent Agreement for the surrender of his CNA license thoroughly and understands he waived his right to counsel and admitted to all of the allegations in the document.
7. Applicant signed a document surrendering his CNA license without thoroughly reading it.
8. The document Applicant signed indicated he knew he had a right to legal counsel and was waiving that right.
9. The Nursing Board documents indicated Patient was a psychiatric patient, increasing Patient's vulnerability.
10. Applicant inappropriately engaged in sexual conduct with Patient while she was an active patient at Hospital, violating numerous Nursing Board rules and statutes.

Notice of Appealable Agency Action:

Pursuant to A.R.S. § 41.1092.03 (B), you may request a formal hearing by notifying the Board, in writing, within 35 days from the date of this letter. The hearing will be held within 60 days after the Board receives your request. (A.R.S. § 41-1092.05)(A)) At the hearing, you will have the burden of proof to demonstrate that you are qualified for licensure regarding the matters set forth above. The Office of the Attorney General will represent the State of Arizona at the hearing. In addition, if you request a hearing, you have the right to request a settlement conference. (A.R.S. § 41-1092.06) Please note that if you do not request a hearing by the close of business on **April 20, 2023**, your file will be closed without recourse to appeal. If you desire licensure in the future you will be required to submit a new application and fee. Please be further advised that

pursuant to the Board's licensure statutes only persons holding licenses to practice behavioral health may do so unless they are exempt from licensure pursuant to A.R.S. § 32-3271.

Notice to Licensure Applicant:

Pursuant to A.R.S. § 41-1093.01, an agency shall limit all occupational regulations to regulations that are demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. Pursuant to A.R.S. § 41-1093.02 and A.R.S. § 41-1093.03, you have the right to petition this agency to repeal or modify the occupational regulation or bring an action in a court of general jurisdiction to challenge the occupational regulation and to ensure compliance with A.R.S. § 41-1093.01.

If you have any questions, I can be reached at (602) 542-1617.

Sincerely,

A handwritten signature in black ink, appearing to read "Tobi Zavala".

Tobi Zavala
Executive Director

CC: Professional's Attorney