

**SETTLEMENT AGREEMENT BETWEEN  
ARIZONA DEPARTMENT OF HEALTH SERVICES  
AND  
MHTCI, LLC dba  
STEP TWO RECOVERY CENTER**

**JURISDICTION**

The Arizona Department of Health Services ("Department") is statutorily charged, pursuant to Arizona Revised Statutes ("A.R.S.") § 36-132(A)(1), with the power and duty to protect the health of the people of Arizona. A.R.S. § 36-136(G) authorizes the Department's Director (the "Director") to "make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health." A.R.S. § 36-405(A) requires the Director to "adopt rules to establish minimum standards and requirements for the construction, modification and license of health care institutions necessary to assure the public health, safety and welfare." The relevant statutes governing the Department's regulation of behavioral health residential facilities are found at A.R.S. § 36-401 *et seq.* The relevant rules governing the Department's regulation of behavioral health residential facilities are found at Arizona Administrative Code ("A.A.C.") Title 9, Chapter 10, Article 7. Pursuant to A.R.S. § 36-136(G) and 36-405, and in accordance with A.R.S. § 36-427, A.A.C. R9-10-111 was adopted. According to A.A.C. R9-10-111(A)(5), the Department may revoke a health care institution license under A.R.S. 36-427 and A.A.C. R9-10-112 "[i]f the Department determines that an applicant or licensee is violating applicable statutes and rules and the violation poses a direct risk to the life, health, or safety of a patient."

**RECITALS**

Pursuant to A.R.S. Title 36, Chapter 4, Article 2, and A.A.C. Title 9, Chapter 10, the Department issued license number BH2607 ("License"), to MHTCI, LLC, dba Step Two Recovery Center ("Licensee") to operate a behavioral health residential facility at 3771 East Brooks Farm Road, Gilbert, AZ 85298 ("Facility") on August 5, 2005. The Licensee is authorized to provide behavioral health services with a total capacity of eight (8). The effective date of the Licensee's perpetual License is August 1, 2020.

On February 16, 2023, Department Health Care Compliance Officers ("Officers") conducted an on-site complaint investigation of complaint #AZ00190974 and a compliance inspection at the Facility. During the complaint investigation and compliance inspection, the Officer documented nineteen (19) violations in a Statement of Deficiencies ("SOD") that was provided to the Licensee.

On April 10, 2023, the Department sent a copy of the SOD to the Licensee along with a letter ("Notice of Enforcement") notifying the Licensee the case had been referred to the Department's Enforcement Team. The Notice of Enforcement also informed the Licensee that they could dispute any of the deficiencies or language listed on the SOD through an Informal Dispute Resolution ("IDR") no later than April 20, 2023. The Department did not receive an IDR request from the Licensee.

On October 20, 2023, the Department issued a Notice of Intent to Revoke Health Care Institution License and Notice of Right to Request Administrative Hearing ("Notice"). The Licensee requested an administrative hearing. Pursuant to A.R.S. § 41-1092.06, Appellant requested an Informal Settlement Conference ("ISC") which took place on November 24, 2023. As a result of the ISC, the parties agree to enter into this Settlement Agreement ("Agreement").

#### **AGREEMENT**

THEREFORE, in consideration of the foregoing, and the terms, covenants, and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Licensee enters into this Agreement for settlement purposes and agrees to comply fully with the terms of this Agreement. This Agreement shall not in any way be construed as, nor deemed to be evidence of any admission or concession on the part of the Licensee with respect to any liability or wrongdoing whatsoever, which liability and wrongdoing are hereby expressly denied and disclaimed by Licensee.
2. Licensee is hereby notified that the Department relies on the exact terms of this Agreement. Licensee acknowledges and expressly agrees that the Department requires strict compliance with all terms and provisions of this Agreement. Acceptance by the Department of performance that is not in strict compliance with the terms of this Agreement shall not be deemed to waive the requirement of strict compliance for all future performance.

3. Upon approval by the Assistant Director of the Department Division of Licensing Services, the effective date of this Agreement shall be the date of the last signature ("Effective Date").
4. Licensee agrees that acceptance of this Agreement constitutes a withdrawal of the request for hearing in this matter and the waiver of any rights to contest or appeal the Notice, including any violation of statute or rule appearing in the Notice.
5. Licensee agrees that the Department shall file a request with the Office of Administrative Hearings to vacate this matter and remand the matter to the Department for an Order consistent with the terms of this Agreement.
6. Licensee agrees to submit a written Plan of Correction ("POC") to the Department. Licensee will submit this document within ten (10) days after the Effective Date of this Agreement via email to the following email addresses: [Residential.Licensing@azdhs.gov](mailto:Residential.Licensing@azdhs.gov) and [Cindy.Graham@azdhs.gov](mailto:Cindy.Graham@azdhs.gov).
7. Licensee agrees to provide all behavioral health services listed within the Facility's Scope of Services on the premises at 3771 East Brooks Farm Road, Gilbert, AZ 85298 pursuant to A.A.C. R9-10-716(A)(5).
8. Licensee agrees that its Behavioral Health Professional ("BHPP") shall be contracted as an employee of MHCTL, LLC dba Step Two Recovery Center, pursuant to A.A.C. R9-10-706(K)(4) and A.A.C. R9-10-716(B)(3).
9. Pursuant to A.A.C. R9-10-711(B)(3), Licensee shall not restrict a resident's right to associate with individuals of their choice, receive visitors, and make telephone calls during the hours established by the Facility unless the standards under A.A.C. R9-10-711(C) is met. If Licensee is restricting a resident's right to associate, receive visitors, and make telephone calls during the hours established by the Facility, the Licensee will ensure the reason for doing so is reflected in the resident's medical record pursuant to A.A.C. R9-10-711(C). Licensee agrees to update its Policies and Procedures to comply with A.A.C. R9-10-711(B)(3) – 711(C)..
10. Licensee agrees that, pursuant to A.A.C. R9-10-722(B)(1), residents are provided with a "[r]oom that provides privacy for a resident to receive treatment or visitors." Treatment includes both individual and group treatment sessions.
11. Licensee agrees that all "personnel member's skills and knowledge are verified and documented before the personnel member provides physical health services or behavioral

- health services” and that “[S]ufficient personnel members are present . . . with the qualifications, experience, skills, and knowledge necessary to ensure the health and safety of a resident” at the Facility at all times, pursuant to A.A.C. R9-10-706.
12. Licensee agrees that, pursuant to A.A.C. R9-10-706(J)(4), a behavioral health professional will be present or on-call at the Facility at all times.
  13. Licensee agrees that “a personnel record is maintained for each personnel member, employee, volunteer, or student . . . throughout an individual’s period of providing services at or for the behavioral health residential facility, and [F]or at least 24 months” after their termination date, pursuant to A.A.C. R9-10-706(G)-(H).
  14. Licensee agrees that it will ensure that each “personnel member’s skills are verified and documented before the personnel member provides physical health services or behavioral health services and according to policies and procedures” and that “sufficient personnel members are present” at the Facility at all times, pursuant to A.A.C. R9-10-706(B)(2)-(3).
  15. Licensee agrees to ensure the Facility will remain free from condition or situation where a resident or individual may suffer self-injury or physical injury including, but not limited to, clothing rod, hook, or ligature point. See A.A.C. R9-10-722(B)(8)(k)(resident bedroom requires a clothing rod or hook in bedroom designed to minimize opportunity for a resident to cause self-injury).
  16. Licensee agrees that, pursuant to A.A.C. R9-10-716(A)(2)(b) and (A)(7)(a), minor residents will not have access to cigarettes, e-cigarettes, or any other nicotine or tobacco products while at the Facility and under its continuous protective oversight.
  17. Licensee agrees to maintain the Facility in substantial compliance<sup>1</sup> with A.A.C. Title 9, Chapter 10, Article 7. Licensee agrees that all inspections, including those to ensure substantial compliance at the Facility, are unannounced.
  18. Licensee agrees that if the Department determines that Licensee has violated the terms of this Agreement, the Department may issue a Notice of Non-Compliance (“NON”) to Licensee. Upon receiving a NON, the parties agree that Licensee has ten (10) business days to cure or correct the violation(s) that form the basis of the NON (“Cure Period”). Licensee agrees that its failure to correct or cure the compliance violation(s) within the Cure Period may result in

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<sup>1</sup> “Substantial Compliance” is defined as “the nature or number of violations revealed by any type of inspection or investigation of a health care institution does not pose a direct risk to the life, health or safety of patients or residents.” A.R.S. § 36-401(46).

a Department enforcement action which may include civil money penalties and/or voluntary surrender of a health care institution license. Licensee agrees to comply with the Department enforcement action outlined in the NON. Licensee agrees that failure to comply with the NON may result in a voluntary surrender, and/or civil money penalties. Licensee agrees that enforcement action identified in a NON is not subject to appeal under A.R.S. Title 41, Chapter 6, Article 10 or A.R.S. Title 12, Chapter 7, Article 6. Licensee further agrees that license revocation, and/or civil money penalties for failure to comply with the NON is not subject to appeal under A.R.S. Title 41, Chapter 6, Article 10 or A.R.S. Title 12, Chapter 7, Article 6.

19. The term of this Agreement shall be three (3) years from the Effective Date of this Agreement.
20. The Department has authority to enter into this Agreement pursuant to A.R.S. § 36-104(7).
21. No provision or principle of law or equity that holds the terms and conditions of a written document shall be interpreted against the party who drafted the Agreement shall have any application to this Agreement.
22. Licensee affirms that Licensee understands and agrees to the terms of this Agreement by affixing its signature below.
23. This Agreement shall only be modified in writing.
24. A waiver of any requirement contained in this Agreement shall not be deemed to be a waiver of any other provision.
25. This Agreement shall be governed, construed, and enforced by the laws of the State of Arizona.
26. This Agreement is subject to the approval of the Assistant Director of the Department's Division of Licensing Services. This Agreement is effective only upon the Assistant Director's approval. In the event the Assistant Director does not approve this Agreement, the Agreement is withdrawn and has no evidentiary value and may not be relied upon nor introduced in any disciplinary action or other proceeding by any party to this Agreement.
27. Each party to this Agreement represents and warrants that the party executing this Agreement on behalf of each party is fully authorized to sign this Agreement and that no further approvals are required to be obtained from any persons or entities. This Agreement has been reviewed by the parties and their legal counsel, or the parties acknowledge that they had the

opportunity to seek legal counsel concerning this Agreement, but voluntarily chose not to seek legal counsel.

28. If for any reason, any portions of this Agreement are adjudicated invalid or unenforceable by any court of competent jurisdiction, the court in its discretion will determine the extent of the invalidity or unenforceability of the provision or provisions as they relate to this Agreement. Furthermore, the remaining unaffected provision or provisions of this Agreement will be valid, fully enforceable and in effect. However, if the invalid or unenforceable provision or provisions materially alter the purpose and intent of this Agreement, any court of competent jurisdiction will have the power to reform this Agreement to the manifest intent and purpose of the parties to this Agreement.
29. This Agreement may be circulated by electronic transmission and signed in counterpart that shall together constitute a single agreement.

**Signatures on Final Page**

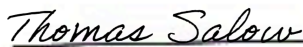
SIGNATURE PAGE



Joshua West  
Statutory Agent and Administrator  
MHCTL, LLC dba  
Step Two Recovery Center  
Licensee

1/3/2024

Date



Thomas Salow  
Assistant Director  
Division of Licensing Services  
Arizona Department of Health Services

1/10/24

Date



Cindy Graham  
Deputy Bureau Chief  
Bureau of Residential Facilities Licensing  
Division of Public Health Licensing  
Arizona Department of Health Service

01/10/24

Date

#1179559



1 KRISTIN K. MAYES  
2 Attorney General  
3 Firm Bar No. 14000

4 Patricia C. LaMagna (#021880)  
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11 Telephone: (602) 542-7668  
12 E-mail: [EducationHealth@azag.gov](mailto:EducationHealth@azag.gov)  
13 *Attorney for Arizona Department of Health Services*

14 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

15 In the Matter of:

16 **MHTCI, LLC, dba,**  
17 **Step Two Recovery Center**  
18 Appellant.

19 Case No.: 2024-BRFL-0149-DHS

20 **MOTION TO VACATE**

21 (Honorable Brian Del Vecchio)

22 Pursuant to Arizona Administrative Code (“A.A.C.”) §§ R2-19-106(A)(3) and -  
23 111(1), the Arizona Department of Health Services (“Department”), with the agreement  
24 of Appellant, moves to vacate the hearing in this case. The parties have entered into a  
25 settlement agreement (“Agreement”) that resolves the issues to be determined at the  
26 hearing. *See* Exhibit A. The Department requests that this matter be remanded to the  
27 Department for a Final Order consistent with the Agreement.

28 **DATED** this \_\_11th\_\_ day of January, 2024.

KRISTIN K. MAYES  
Attorney General

/s/ Elise Phalen

Elise Phalen

Assistant Attorney General

*Attorney for Arizona Department of Health Services*

1 **CERTIFICATE OF SERVICE**

2 **ORIGINAL** filed electronically this  
3 This 11th   day of January, 2024, with:

4 Honorable Brian Del Vecchio  
5 Office of Administrative Hearings  
6 1740 W. Adams St., Lower Level  
7 Phoenix, AZ 85007

8 **COPIES** of the foregoing sent via  
9 OAH’s electronic filing system  
10 This 11th   day of January, 2024:

11 MHCTI, LLC dba Step Two Recovery Center  
12 Josh West, Statutory Agent/Administrator  
13 3771 East Brooks Farm Road  
14 Gilbert, AZ 85298

15 Flynn Carey  
16 Lisa Nagel  
17 Mitchell, Stein, Carey, Chapman, PC  
18 2600 N. Central Ave., Suite 100  
19 Phoenix, AZ 85004  
20 [lisa@mscclaw.com](mailto:lisa@mscclaw.com)

21 Clerk of the Department  
22 Arizona Department of Health Services  
23 150 N. 18th Ave., Ste. 200  
24 Phoenix, AZ 85007  
25 [ACR@azdhs.gov](mailto:ACR@azdhs.gov)

26 Thomas Salow, Assistant Director  
27 Cindy Graham, Deputy Bureau Chief  
28 ADHS/Division of Public Health Services-Licensing Services  
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Phoenix, AZ 85007  
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By: /s/ Elise Phalen

#11816195

# **EXHIBIT A**