SETTLEMENT AGREEMENT BETWEEN
MISSOURI COMMITTEE FOR PROFESSIONAL COUNSELORS
AND JASON B. RYAN

Jason B. Ryan ("Licensee"), and the Missouri Committee for Professional Counselors ("Committee"), enter into this settlement agreement ("Agreement") for the purpose of resolving the question of whether the Licensee's license as a professional counselor will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo, the parties hereto waive the right to a hearing before the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and additionally, the right to a disciplinary hearing before the Committee under § 621.110, RSMo.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the committee at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against this license. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights

and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Committee in determining there was cause to discipline his license, along with citations to law and/or regulations the Committee believes were violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Committee that Licensee's license, numbered 2010003885 is subject to disciplinary action by the Committee in accordance with the provisions of Chapter 621, and Chapter 337, RSMo.

Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Committee for Professional Counselors ("Committee") is an agency of the state of Missouri, created and existing pursuant to § 337.535, RSMo, for the purpose of carrying out the provisions of §§ 337.500 through 337.540, RSMo.[1]

2. Jason B. Ryan is a natural person licensed by the Committee as a professional counselor, license number 2010003885. Licensee's Missouri professional counselor license is current and active.

3. Licensee's residential address is 1733 Northwoods Court, Cape Girardeau, MO, 63701.

[1] All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

4. On or about August 1, 2011, the Committee received a complaint regarding Licensee from Licensee's former employer. The complaint alleged that Licensee was under the influence of alcohol or other intoxicant while performing duties as a professional counselor at Community Counseling in Cape Girardeau, Missouri. Attached to the complaint was an employee incident report dated July 28, 2011 from the Human Resources Director at Community Counseling, a note to the file regarding the incident with Licensee, alcohol testing forms for Licensee dated July 27, 2011, and a letter of termination from Community Counseling for Licensee. The complaint also stated that there was a previous incident where co-workers reported suspicions about Licensee being under the influence of alcohol but Licensee's blood alcohol level was not tested at that time. As a result, however, Licensee signed a form stating he agreed to have his blood tested if another incident occurred. As a result of the complaint, the Committee initiated an investigation of the allegations contained in the complaint.

5. As part of the Committee's investigation of the complaint, Division of Professional Registration, Central Investigative Unit Investigator Pete Fleischmann met with Licensee on or about September 21, 2011. Licensee admitted to testing positive for blood alcohol on July 27, 2011. Licensee stated that his alcohol level was high due to his drinking the previous evening. Licensee stated he drank beer until approximately 3:30 a.m. to 4:30 a.m. the evening before reporting to work at 8:00 a.m. He stated he "only planned on drinking two or three beers" but he thinks he drank "about twelve 'good' beers during the time period." He described "good" beer as premium beer. He stated he drank the beer at his residence. Licensee stated

he was also on various prescription medications including Lexapro and Wellbutin for depression, three mg of Xanax, Lunesta to help him sleep and Metoprolol, a heart pill to regulate adrenaline. He stated he had trouble sleeping due to his schedule changing all the time and that he had been accustomed to beginning work at 11:00 p.m. and working all night, being on call and covering emergency rooms and jails in Cape Girardeau and Bollinger counties. When speaking with Licensee on September 21, 2011, Investigator Fleischmann noticed an odor of intoxicants on his breath and that his eyes were watery, the pupils were dilated and he had a poor reaction to light. Licensee denied having consumed alcohol prior to the interview and stated he had not done so since the day after the incident at Community Counseling. He stated he had not eaten prior to the 5:00 p.m. interview but he had chewed gum. He stated he had worked from 4:00 a.m. until 1:30 p.m. and his eyes were watery because of that. He stated he was currently taking Lexapro and Xanax. Licensee stated that with regard to reporting to work with alcohol in his system, he did "mess up." He stated he was currently working from 5:00 a.m. to 1:30 p.m. as a substance abuse counselor at Cape Metro Treatment Center.

6. As part of the Committee's investigation, Investigator Fleischmann spoke with Paula Huffman, Secretary, at Community Counseling. Ms. Huffman stated that she remembered the incident with Licensee on July 27, 2011. She stated she had not noticed any actions to make her suspect he was intoxicated but several other people at Community Counseling mentioned to her that they believed he was under the influence.

7. As part of the Committee's investigation, Investigator Fleishmann spoke with Terry Shirley, Outpatient Manager at Community Counseling. Mr. Shirley stated that on July 27, 2011, he saw Licensee stumble into the doorframe of Licensee's office when he tried to enter it. Mr. Shirley stated that while talking with Licensee on July 27, 2011, he noticed the odor of intoxicants on Licensee's breath, that his speech was somewhat slurred, and that he appeared uncoordinated. Mr. Shirley stated he notified David Bertram of his observations.

8. As part of the Committee's investigation, Investigator Fleishmann spoke with Sharon Braun, Ph.D., of Community Counseling. Dr. Braun stated that she had not been in personal contact with Licensee on July 27, 2011. She stated her involvement was limited to filing the complaint with the Committee against Licensee.

9. As part of the Committee's investigation, Investigator Fleishmann spoke with David Bertrand, Crisis Supervisor, of Community Counseling. Mr. Bertrand stated that Ms. Hoffman and Mr. Shirley brought Licensee's possible intoxication in the work place to his attention. Mr. Bertrand stated he reported the suspicions to his supervisor, Sondra Elfrink. Mr. Bertrand stated that he and Licensee went to Ms. Elfrink's office. Mr. Bertrand stated that because Licensee had previously signed an agreement to submit to a breath test as part of his employment, Mr. Bertrand took Licensee to have a breath test at Immediate Health Care.

10. As part of the Committee's investigation, Investigator Fleishmann spoke with Sondra Elfrink, Human Resources Director at Community Counseling.

Ms. Elfrink stated that on July 27, 2011, Mr. Bertrand reported that Licensee's speech was slurred and he may be under the influence of intoxicants. She stated that when she met with Licensee, she detected the odor of intoxicants on his breath. She stated that Licensee agreed to submit to a test to determine if he had consumed intoxicants. She stated that the tests revealed he was under the influence.

11. Licensee submitted to a blood alcohol test at 3:38 p.m. on July 27, 2011. The test results revealed that Licensee's blood alcohol level was .043. Approximately 45 minutes later, Licensee was tested a second time. The second test revealed a blood alcohol level of .046.

12. Licensee also provided a written response to the complaint on or about August 15, 2011. In his response Licensee stated that on July 27, 2011, he tested positive for a blood alcohol level that was "relatively high from drinking the night before." He stated that he informed Ms. Elfrink he drank until midnight but that was inaccurate and it was actually 3:30 or 4:00 a.m. He stated he suffered from insomnia and had a long history of medications for it but was unable to take them while on-call and as a result experienced negative side-effects from the medications. He stated he was stressed out and the crisis schedule included around 30+ hours for no pay. He stated on July 26, 2011, he had a hard time sleeping and "accidentally drank too much." He stated that he had stopped drinking entirely since that time. He stated he did not feel impaired on July 27, 2011. Licensee stated with regard to the previous incident, he had put alcohol based sanitizer on his hands, according to hospital policy, before meeting with a patient at 4:00 a.m. who had been brought into the hospital against her will by her boyfriend. He stated that the patient's

boyfriend made a complaint against him stating he smelled of alcohol and his eyes were red. He also stated that the doctors and nurses at the hospital with whom he had worked that morning spoke on his behalf and the complaint was unfounded. Finally, he stated it was "an extremely humbling experience and I assure you that this will never happen again. I did drink late into the night/early into the morning to the point that I had a BAC that was positive, which I wish I could take back, but I can only learn from my mistake and not repeat it."

13. The Committee invited Licensee to appear before it to discuss the allegations in the complaint at both its March and June, 2012 meetings. Licensee requested that the March meeting be rescheduled to June. The Committee provided Licensee notice of the June 15, 2012 meeting date, time and location by certified mail. The Committee received the return receipt card for the meeting notice back signed. Licensee did not appear at the June 2012 meeting.

14. Licensee's actions as described above in paragraphs 3 through 12 constitute misconduct, misrepresentation or dishonesty in the performance of the functions or duties of a professional, constitute a violation of regulations adopted by the Committee pursuant to §§ 337.500 to 337.540, constitute a violation of any professional trust or confidence, and constitute unethical conduct as defined in the ethical standards set by rule by the Committee.

15. Cause exists for the Committee to take disciplinary action against Licensee's license under § 337.525.2(5), (6), (13) and (15), RSMo, which states in pertinent part:

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any license required by sections 337.500 to 337.540 or any person who has failed to renew or has surrendered his license for any one or any combination of the following causes:

...

(5) Incompetency, misconduct, fraud, misrepresentation or dishonesty in the performance of the functions or duties of a professional counselor;

(6) Violation of, or assisting or enabling any person to violate, any provision of sections 337.500 to 337.540, or of any lawful rule or regulation adopted pursuant to sections 337.500 to 337.540;

...

(13) Violation of any professional trust or confidence;

...

(15) Being guilty of unethical conduct as defined in the ethical standards for counselors adopted by the division and filed with the secretary of state.

16. State regulation 20 CSR 2095-3.010, regarding professional responsibility of professional counselors, provides in pertinent part:

(1) The ethical standards for counselors (hereinafter standards) shall apply to a licensed professional counselor, registered supervisor that is a licensed professional counselor, provisional licensed professional counselor, counselor-in-training, and an applicant for licensure and/or supervision (hereinafter referred to as counselor or counselors). A violation of these standards constitutes unprofessional conduct and is sufficient reason for disciplinary action pursuant to section 337.525, RSMo.

...

(10) The counselor shall not undertake or continue a therapeutic relationship with a client with the objectivity or competency of the counselor is or is reasonably expected to be impaired because of emotional, mental, psychological, or substance abuse disorder[.]

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Committee in this matter under the authority of § 621.045.3, RSMo.

17. The terms of discipline shall include that the professional counselor license of Jason B. Ryan, license number 2010003885, is hereby placed on **PROBATION** for a period of **THREE (3) YEARS**.

IV.

TERMS AND CONDITIONS

18. During the aforementioned probation, Jason B. Ryan shall be entitled to perform as a licensed professional counselor subject to the following terms and conditions:

A. Specific Requirements

1. Mental Health Evaluation

a. At Licensee's expense, Licensee must undergo an evaluation to assess current functioning, judgment and personality and effects of such functioning, judgment and personality on Licensee's ability to practice, with such evaluation conducted by a licensed mental health professional approved by the Committee. Within twenty (20) business days of the effective date of this agreement, the ~~Committee will provide~~ Licensee **will submit** ~~with~~ two names of licensed mental health professionals to conduct the evaluation **along with the credentials of the licensed mental health professional.** ~~Within ten (10) business days after the Committee provides Licensee the proposed licensed professionals, Licensee shall notify the Committee in writing of his choice of licensed mental health professional from the Committee's list to perform the assessment.~~ Licensee shall begin the evaluation within thirty (30) days of ~~notifying the~~ **notification from the** Committee of ~~his choice of licensed mental health professional~~. Licensee must immediately notify

the Committee, in writing, of the start date of the evaluation. In the event either licensed mental health professional approved by the Committee is unable to conduct the evaluation, Licensee shall advise committee with ten (10) business days of the unavailability of the Committee selected licensed mental health professional and shall work with the Committee on securing another licensed mental health professional.

b. The written evaluation must be submitted by the evaluating licensed mental health professional to the Committee within thirty days of the evaluation being initiated. It shall be Licensee's responsibility to ensure that the evaluation is submitted by the evaluating licensed mental health professional to the Committee. The evaluating licensed mental health professional shall submit the evaluation to: Missouri Committee for Professional Counselors, P.O. Box 1335, Jefferson City, Missouri 65102.

c. The evaluating licensed mental health professional shall be released to discuss the purpose and methods of the evaluation with a representative of the Committee prior to performing the evaluation. The evaluation will be pursuant to consultation with the Committee. While Licensee shall pay for the evaluation, the evaluating licensed mental health professional shall work on behalf of the Committee.

d. Licensee shall abide by the recommendations of the evaluating licensed mental health professional set forth in the mental health evaluation evaluation. Licensee shall engage in all testing, evaluation, supervision, therapy or other treatment recommended. If therapy is deemed appropriate, the treating licensed mental health professional must be different from the licensed mental health professional performing the evaluation and must be approved by the Committee. Licensee shall commence any recommended therapy or treatment within twenty (20) business days of the evaluation completion date.

e. If therapy is deemed appropriate, it must be continued according to the frequency of sessions recommended by the evaluating licensed mental health professional. The treatment modality or plan shall reflect issues and themes recommended by the evaluating licensed mental health professional as well as any additional treatment goals. Ongoing treatment and documentation should address the evaluating licensed mental health professional's recommendation.

f. In the event the treating licensed mental health professional becomes unable or decides not to continue serving in his/her capacity as a treating mental health professional or otherwise ceases to serve as a treating mental health professional during the disciplinary period, then Licensee shall:

1. Within three (3) business days of being notified of the treating licensed mental health professional's inability or decision not to continue serving as the treating mental health professional, or otherwise learning of the need to secure a treating mental health professional, advise the Committee in writing that he is needing to secure a treating licensed mental health professional and the reasons for such change; and

2. Within twenty (20) business days of being notified of the treating licensed mental health professional's inability or decision not to continue serving as the treating licensed mental health professional, or otherwise learning of the need to secure a treating license mental health professional, secure a treating licensed mental health professional pursuant to and in accordance with the terms and conditions set forth in this agreement.

g. Licensee must give the Committee permission in writing to review Licensee's treatment and/or medical records.

h. Licensee's licensed treating mental health professional must report every four months to the Committee on Licensee's progress. It is Licensee's responsibility to ensure that the reports are provided in a timely manner to the Committee. The monitoring clinician shall submit the reports to: Missouri Committee for Professional Counselors, P.O. Box 1335, Jefferson City, Missouri 65102.

2. <u>Substance Abuse Evaluation</u>

a. Licensee shall attend and complete a Committee approved chemical dependency evaluation. Licensee shall be responsible for securing an appropriate entity to complete the evaluation and obtaining the Committee's approval for that entity prior to completing the entity's evaluation program. Licensee shall arrange with the approved evaluation entity to complete the evaluation within the first eight weeks of this

Settlement Agreement. Licensee shall follow all recommendations of the entity with regards to counseling, evaluations, any treatment deemed necessary by an evaluation, and any follow-up care. Failure to complete the evaluation and follow all recommendations shall constitute a violation of this Agreement. A copy of the completed evaluation will be due, in the Committee's office, within 30 days of the date of the evaluation.

b. During the disciplinary period, Licensee shall, at Licensee's expense, submit to drug and/or alcohol screens as required by the Committee. Licensee shall, upon demand and without delay, provide a biological sample to the Committee's designated representative, including allowing the Committee's designated representative to obtain witnessed biological fluid samples and shall cooperate fully and completely with the Committee's designated representative in providing such samples. The presence of any controlled substance, alcohol, or any drug whatsoever in a drug screen for which Licensee does not hold a valid prescription shall constitute a violation of this Agreement.

c. Licensee must give the Committee permission in writing to review Licensee's treatment and/or medical records.

3. Required Supervision

a. During the probationary period, Jason B. Ryan shall submit name(s) of potential licensure supervisor(s) along with the supervisor's resume or curriculum vitae to the Committee for approval. The potential supervisor must have been licensed for two years as a professional counselor, psychologist or psychiatrist. The potential supervisor cannot be a relative of Jason B. Ryan. The potential supervisor cannot hold an inactive, provisional, expired, temporary, retired, probated, or suspended license.

b. The approved supervisor shall, on a quarterly basis, submit a supervisor's report to the Committee. The supervisor's report shall include an evaluation of Jason B. Ryan's counseling skills, the estimated number of clients per week receiving counseling from Mr. Ryan, compliance with record keeping requirements, and any other information that the supervisor deems appropriate.

B. General Requirements

1. During the probationary period, Jason B. Ryan shall comply with all provisions of Chapter 337, RSMo, all applicable Committee regulations, all applicable federal and state drug laws, rules and regulations and all applicable federal and state criminal laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions.

2. During the probationary period, Jason B. Ryan shall keep the Committee informed of his current work and home addresses and telephone numbers. Jason B. Ryan shall notify the Committee in writing within ten days (10) of any change in this information.

3. During the probationary period, Jason B. Ryan shall timely renew his license and shall timely pay all fees required for licensure and comply with all other Committee requirements necessary to maintain said license in a current and active state.

4. During the probationary period, Jason B. Ryan shall accept and comply with unannounced visits from the Committee's representatives to monitor compliance with the terms and conditions of this Settlement Agreement.

5. During the probationary period, Jason B. Ryan shall appear in person for interviews with the Committee or its designee upon request.

6. If, at any time during the probationary period, Jason B. Ryan changes his address from the state of Missouri, or ceases to maintain his license current or active under the provisions of Chapter 337, RSMo (as amended), or fails to keep the Committee advised of all current places of residence, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.

7. Upon expiration of the probationary period, Jason B. Ryan's license shall be fully restored if all requirements of the law have been satisfied; provided, however, that in the event the Committee determines that Jason B. Ryan has violated any term or condition of this Settlement Agreement, the Committee may, in its discretion, pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions or remedies concerning the allegations identified herein.

8. The Committee retains jurisdiction to hold a hearing at any time to determine if a violation of this Settlement Agreement has

occurred and, if a violation of this Settlement Agreement has occurred, may seek to amend this Settlement Agreement or impose further disciplinary or appropriate action at the discretion of the Committee. No order shall be entered by the Committee pursuant to this paragraph without any required notice and opportunity for a hearing before the Committee as provided by Chapter 536, RSMo (as amended).

9. Unless otherwise specified by the Committee, all reports, documentation, notices, or other materials required to be submitted to the Committee shall be forwarded to: Missouri Committee for Professional Counselors, P.O. Box 1335, Jefferson City, Missouri 65102.

10. Any failure by Jason B. Ryan to comply with any condition of discipline set forth herein constitutes a violation of this Settlement Agreement.

19. The parties to this Agreement understand that the Committee will maintain this Agreement as an open record of the Committee as provided in Chapters 337, 610 and 324, RSMo.

20. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

21. Licensee, together with his heirs and assignees, and his attorneys, do hereby waive, release, acquit and forever discharge the Committee, its respective members and any of its employees, agents and attorneys, including any former Committee members, employees, agents and attorneys of, and from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation,

including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arising out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

22. If no contested case has been filed against the Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the Licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

23. If Licensee has requested review, Licensee and the Committee jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date of the Administrative

Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect

LICENSEE

Jason B. Ryan

Date: 12/07/12

COMMITTEE

Loree Kessler, Executive Director
Committee for Professional
Counselors

Date: 12/18/12

Stephen Doerhoff, Attorney for
Committee for Professional
Counselors

Date: 12/13/12