



STATE OF ARIZONA
BOARD OF PSYCHOLOGIST EXAMINERS
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DOUGLAS A. DUCEY
Governor

HEIDI HERBST PAAKKONEN, M.P.A.
Executive Director

Committee on Behavior Analysts

REGULAR SESSION MINUTES

August 28, 2020 - 9:30 a.m.

Held via Zoom

1. CALL TO ORDER

Dr. Davis-Wilson called the meeting to order at 9:31 a.m.

2. ROLL CALL

Committee Members Present

Diana Davis-Wilson, DBH, BCBA - Chair
Bryan Davey, Ph.D., BCBA-D
Paige Raetz, Ph.D., BCBA-D
Donald Stenhoff, Ph.D., BCBA-D

Staff Present

Heidi Herbst Paakkonen, Executive Director
Jennifer Michaelsen, Deputy Director
Kathy Fowkes, Licensing Specialist

Assistant Attorney General Present

Jeanne Galvin, Esq.

3. REMARKS/ANNOUNCEMENTS

• General Committee Remarks, Announcements and Updates

The Committee on Behavior Analysts (CBA) and Board continue to stay the course where virtual meetings and mostly remote work on the part of the staff is concerned. Dr. Davis-Wilson thanked everyone for their collective efforts to ensure meetings operate effectively.

4. APPROVAL OF MINUTES

A. August 7, 2020 Regular Session

MOTION: Dr. Stenhoff moved the minutes be approved as drafted. Dr. Raetz seconded the motion. Dr. Davis-Wilson stated for the record that she would recuse from the vote.

VOTE: The motion was approved with 3 affirmative votes and one recusal.

B. August 7, 2020 Executive Session

MOTION: Dr. Stenhoff moved the minutes be approved as drafted. Dr. Raetz seconded the motion. Dr. Davis-Wilson stated for the record that she would recuse from the vote.

VOTE: The motion was approved with 3 affirmative votes and one recusal.

5. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING COMPLAINTS AND RECOMMENDATION TO THE BOARD

A. Complaint No. 21-01, Brian Schaffer

Dr. Davis-Wilson provided an overview of the complaint filed by H.R. consisting of allegations that Mr. Schaffer was observed conducting overly aggressive and restrictive behavior toward his young male client with high-functioning autism, and addressed the client with mocking language and harsh non-teasing language. As a result of these events Mr. Schaffer was placed on administrative leave by his employer and was subsequently terminated due to what the employer deemed was inappropriate conduct. Child Protective Services and the Phoenix Police Department were notified of the incidents, the former of which is still under investigation and is therefore confidential, and the latter of which has been dismissed. The investigative record includes the client's clinical record, and several videos of the events reported that lack audio.

Mr. Schaffer's response to the complaint included a summary of his professional background, a description of the client's needs and treatment goals, and Mr. Schaffer's rationale for his treatment approach which consisted of certain games which were effective in terms of achieving therapeutic success. The response cited the literature supporting how touch and play therapy of the nature used by Mr. Schaffer has been effective in children with similar diagnoses. Mr. Schaffer acknowledged that while there is research supporting his treatment approach he could have been more effective in communicating his approach and the rationale for it to other members of the client's care team. Mr. Schaffer has taken it upon himself to complete additional continuing education and training to better inform himself relative to the concerns expressed in the complaint. The complaint response noted that the results of a polygraph examination support the licensee's statement that the therapy was designed to support the client's treatment goals and not to harm or punish him.

The complainant HR was present and identified herself as the clinical director and former supervisor of Mr. Schaffer. She stated that the investigation performed by the agency found that Mr. Schaffer had violated their policies and had placed the client at risk for harm; these findings resulted in his employment termination.

Mr. Schaffer introduced himself to the Committee. Flynn Carey, Mr. Schaffer's attorney, made a statement on behalf of his client noting that the child made significant behavioral progress while in Mr. Schaffer's care. Mr. Carey asserted the videos depict physical play, natural environment teaching and positive reinforcement. He also noted that the videos comprise a very small percentage of the time Mr. Schaffer spent with the client. He further commented that the evidence does not meet the standard to find that a violation occurred. Mr. Carey stated that the client had no injuries from Mr. Schaffer, and as he is verbal he has the ability to say "no". He also commented that the employment manual for the agency emphasizes that physical activity is expected while working with their clients. Mr. Carey explained that his client's use of the terms "big kid" and "baby" were used to categorize behaviors for purposes of modifying the client's behaviors to position him for a successful transition to Kindergarten; he further noted it was an effective behavior modification strategy for this client. Finally, Mr. Carey stated that nowhere in the record is there evidence that Mr. Schaffer has any negative intentions relative to the client

and his treatment. He recommended the Committee address this as a training remediation opportunity as opposed to taking punitive action against Mr. Shaffer.

The Committee asked HR whether she is listed on the treatment plan, which she denied. She explained she oversees the implementation of the treatment plans as performed by the behavior analysts. She explained that she used telehealth to observe the treatment delivered due to COVID-19. The Committee questioned HR relative to where the responsibility lies for designing interventions; she indicated that responsibility is with the behavior analyst. In response to questions concerning training of the behavior analysts with respect to intervention selection, she indicated the plans are customized to the needs of the client.

The Committee posed questions to Mr. Shaffer relative to his approach to behavior reduction plans, and his approach to this client. Mr. Shaffer stated he relied to some degree on information supplied by his predecessor and his own observations of the client. He stated that he felt strongly there was a need to do more assessment, but was urged to get services started for the client as COVID-19 had significantly reduced their client load. Mr. Shaffer explained that this child was his only client, and given that he has minimal information about him prior to beginning services, he initiated treatment while gathering data for purposes of establishing a current and appropriate Behavior Intervention Plan (BIP). Mr. Shaffer stated that he had the parents' approval to try different approaches. He further stated there was no oversight of his efforts on this case. Mr. Shaffer also noted that he was utilizing certain interventions to help the client achieve the desired appropriate behaviors. He felt the skills acquisition programs were designed to help the client transition and to achieve some confidence upon which to build future success. Mr. Shaffer described the activity in the videos as mostly play.

In response to questions concerning reinforcement breaks, Mr. Shaffer was questioned about the lack of documentation of these in the treatment notes. He admitted that going forward he will be much more detailed in his note-taking. He explained that he was not advised that he was required to document the specific reinforcers he was using, but he could easily recognize the client's preferences and therefore what would be effective. The Committee noted that it appeared to be an informal process as this was not documented. Mr. Shaffer affirmed the client's preferences were vocal requests. He further explained that he was initially hesitant to engage in so much physical play with an energetic five year old, but the client clearly desired to engage in that way, and it had a calming and redirecting effect on the client. He noted that the parents were also in approval of this approach. Mr. Shaffer assured the Committee he would never do anything that would cause harm to a client.

In response to questions, Mr. Shaffer explained that he encouraged his client's desire to behave like a "big boy" and not as a "baby" as it motivated his client to display appropriate behaviors as that of a Kindergartner. This approach also helped his client discern statements that are joking and sarcastic in nature as a teaching tool. Mr. Shaffer explained that once the token economy was introduced, it was highly effective to keep the client focused and on task both in session and when used by the client's family at home.

When asked whether the treatment activities captured in the video were properly coded for billing purposes, Mr. Shaffer stated that he believed they were billed appropriately as direct care. He acknowledged that while the play that involved straddling the client may appear concerning, he assured the Committee that it was done in the context of playing the Superhero game and there was no actual contact. When asked how he would help a client discern between play of this nature and inappropriate grooming contact that would compromise a client's safety, Mr. Shaffer stated that it was very clear to the client that what they were doing was play and that the client could recognize and verbalize something that is inappropriate in a self-assertive way.

The Committee asked Mr. Shaffer to explain his understanding of touch therapy and play therapy as ABA treatment strategies. Mr. Shaffer and Mr. Carey explained that the complaint response relative to the explanation of the scientific basis for the physical therapies was composed with the psychologist members of the Board in mind. The Committee asked why he did not document the behavior change program he implemented. Mr. Shaffer explained that he was employing some strategies that were related to activities he was already doing in accordance with the treatment plan. He affirmed that the client's parents, particularly his mother, often observed or could hear the sessions. He explained that he did not document the mother's presence as he felt doing so would suggest she was an active participant to the sessions when she was not. In response to questioning, Mr. Shaffer stated he believed lifting the client was appropriate if done properly, and he explained that he positioned the table in such a way to help manage the client from escaping which is a permissible intervention. In response to questioning concerning his documentation of his rationale in using these practices, Mr. Shaffer admitted that these modifications were implemented after the treatment plan was established, and he did not edit and resubmit the plan to include them; however going forward he would take a different approach. He assured the Committee this experience is teaching him to be more thorough in recording his notes. The Committee reviewed the language of the BACB code specific to informed consent and asked Mr. Shaffer to explain his familiarity with the language.

In response to questions Mr. Shaffer explained that the client's parents sought treatment to manage his defiant behaviors and to help him develop appropriate skills for Kindergarten, including social skills. He was asked to describe what information he reviewed to prepare for working with the client, to which he replied that he reviewed the entire record and mostly based his treatment approach on what he learned from meeting with and observing the family. Mr. Shaffer affirmed that he has experience reviewing medical charts and felt comfortable with what he reviewed for this client and what he learned from his observations. The Committee noted the absence of notes documenting the goals that Mr. Shaffer is describing. He admitted that some of the treatment approaches he added, that while cleared with the family and his superiors, were not documented. The Committee asked how often he reviewed the data collected for the client; he affirmed he did so every day and it informed him with respect to measuring the client's progress. Mr. Shaffer was questioned relative to some of the low-level treatment goals for a child who was high functioning. He explained that some of the easy goals were used to build confidence and to get him used to processing more complex instruction sets. He also explained that the client had some other deficits for which the simple goals were appropriate. The Committee reminded Mr. Shaffer that as the clinician, ultimately he has the responsibility to thoroughly document all elements of the client's care.

When asked to explain his clinical rationale for modifying the client's outburst behaviors, Mr. Shaffer described using breathing exercises to calm the client, citing support for that strategy. When asked to define DRO, he described decreasing undesirable behavior by replacing it with desirable behavior, using incentives in the process. He affirmed that the token economy was used to reward the client when he exhibited appropriate behavior. In response to Committee questioning he described the parent training as consisting of listening to the parent and covering the basics of ABA. He explained that the family was going through a lot of stress so sometimes he had to modify his training plans. When asked why services began prior to obtaining the parents' informed consent, Mr. Shaffer explained that this would have been handled by the Operations Manager and he was not involved in this process.

The Committee questioned whether the entire clinical record had been obtained for this investigation as it appears the record begins at the point where Mr. Shaffer assumes responsibility for delivering services. HR affirmed that the complete record was submitted. The Committee noted there is some evidence that other documentation for this client should exist. Ms. Michaelsen confirmed that the subpoena issued pursuant to this investigation encompassed the entire client record. When asked by the Committee, Mr. Shaffer affirmed that he was aware he was videotaped during the treatment sessions, and he surmised the parents were also aware of that fact.

The Committee deliberated the case, noting that the videos failed to capture all of the necessary context that would be helpful; they are subjective and difficult to interpret. However the clinical record established concerns relative to the development of the treatment plan, the lack of treatment protocols and direction for the treatment goals, and the lack of support for the treatment strategies used. The discussion reflected that had appropriate documentation occurred, this discussion would have been very different. Concerns were expressed that the behavior analyst was reduced to performing at the level of a technician, and some critical aspects of ABA were not addressed with the client. The discussion again noted the lack of documentation that was recorded for this client, and cited concerns for some of the physical positioning that was used.

The Committee discussed possible violations of A.R.S. §32-2091(12)(e)(h) and (dd) specific to the Professional and Ethical Compliance Code for Behavior Analysts at sections 11.01, 1.04, 2.10, 3.01, 4.01, 4.04, 4.05, 4.06, 4.09 and 4.10. The Committee discussed whether (o) should be considered as well.

MOTION: Dr. Davis-Wilson moved to forward this complaint to the Board for possible violations of A.R.S. §32-2091(12)(h), (o) and (dd) specific to sections 1.01, 1.04, 2.10, 3.01, 4.01, 4.04, 4.05, 4.06, 4.09 and 4.10 of the Professional and Ethical Compliance Code for Behavior Analysts. Dr. Davey seconded the motion.

DISCUSSION: The members noted that while the videos were the impetus for the complaint, the focus is now on the ethical conduct of the licensee. The Committee also discussed that the conduct of other behavior analysts at the agency are of concern, and given that there is likely documentation for this client that was omitted from the subpoena.

VOTE: The motion was approved 4-0.

6. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING RECOMMENDATION TO THE BOARD PERTAINING TO APPROVAL OF BEHAVIOR ANALYST APPLICANTS

A. Behavior Analyst Application for Licensure

1) Ariana Leone, M.A.

The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules, however she omitted supplying an answer to one question on the application. The Committee directed staff to contact the applicant to supply that answer; should she do so in timely fashion the application can be forwarded to the Board with a recommendation for approval of licensure.

2) Brittany Messina, M.Ed.

Dr. Davis-Wilson stated for the record that she is recused from the consideration and vote on this item. The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that the applicant disclosed having been charged with a DUI in July of 2018 which was sentenced as a misdemeanor; the documentation relative to this incident was submitted, and indicates she will be on probation until February 2021 unless she is released sooner. Ms. Messina did not submit a written explanation of the event, however. Ms. Galvin advised the Committee that a written statement of the facts and circumstances is routinely requested, and noted a misdemeanor DUI is not a crime of moral turpitude. The Committee noted there is some evidence in the record of more than one DUI. It was the consensus of the Committee to make a formal request for additional information to include a detailed written explanation of events related to both the

2017 and 2018 DUI charges, additional documentation for the 2017 DUI, and to request the applicant appear before them for a personal interview. Additionally, the Committee directed staff to obtain clarification relative to what appears to be a shortage of 168 hours of supervised training.

3) Carolina Zavala, M.Ed.

The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules with the exception of the fact that she is 0.5 hours short of the required 1,500 hours of supervised training. Ms. Galvin advised the Committee that Board precedent would require the applicant supply documentation to show that the 1,500 hour requirement was met as rounding the values isn't an option. The members agreed by consensus that Board staff can contact the applicant to obtain an updated accounting of her hours at her current employment site for purposes of bringing the application to the Board for approval of licensure.

4) Kelsee Mullen, M.A.

The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules, however the matriculation date was omitted on the application. The members agreed by consensus that Board staff can contact the applicant to obtain that information for purposes of bringing the application to the Board for approval of licensure.

5) Ryon Sellers, M.Ed.

The Committee proceeded with a substantive review of the application. The Committee noted that Mr. Sellers disclosed having been terminated by a previous employer for two attendance infractions in a six-month period. Mr. Sellers was present for the discussion and agreed to answer questions posed by the Committee. He admitted that his motivation suffered during that period of time due to being overwhelmed with full-time work, full-time school, and a long daily commute. He explained that the experience taught him to better prioritize his responsibilities. Upon review, the Committee noted that the materials submitted were complete and fulfilled the requirements of statutes and rules, and that the application can be forwarded to the Board with a recommendation for approval.

MOTION: Dr. Davis-Wilson moved to forward the application of Ryon Sellers, M.Ed. to the full Board with a recommendation to approve the license; the motion included that the applications of Ariana Leone, M.A., Carolina Zavala, M.Ed., and Kelsee Mullen, M.A. will be forwarded to the full Board with a recommendation to approve the license once they have supplied the additional information noted in the discussion. Dr. Raetz seconded the motion.

VOICE VOTE: The motion was approved 4-0.

B. Behavior Analyst Application for Temporary Licensure

1) Karissa Roesler-Seabright

Ms. Paakkonen advised the members that in April of this year the Board established a temporary license pursuant to A.R.S. §32-3124 under the authority of the Arizona Department of Health Services given the COVID-19 state of emergency. Ms. Roesler-Seabright, BCBA, has applied for a temporary license pursuant to A.R.S. §32-3124. Her application indicates she is a resident of Arizona and that she holds no license as a behavior analyst in any U.S. jurisdiction. During the Board's discussion relative to establishing the temporary license opportunity, the Board's approval included the provision that in the case of a behavior analyst residing in a state that does not offer licensure, the Board will accept BCBA certification in lieu of licensure. It would

seem that because the applicant is in Arizona where licensure is offered, she does not qualify for this temporary license.

The Committee questioned why the applicant elected to not pursue an unrestricted license as a behavior analyst. Staff noted that the applicant has never submitted an application, and did not submit an explanation as to why she is seeking a temporary license for which she is not qualified. Ms. Galvin advised that the Committee should suggest through staff that Ms. Roesler-Seabright withdraw her application for temporary licensure and submit an application for an unrestricted license.

MOTION: Dr. Davey moved to recommend staff write to Ms. Roesler-Seabright, and suggest she withdraw her application and apply for a full license; failure to withdraw the temporary application will result in a recommendation by the Committee to the Board to deny the license. The motion noted that the same procedure will be followed for all applicants with similar facts and circumstances. Dr. Stenhoff seconded the motion.

VOTE: The motion was approved 4-0.

C. Behavior Analyst Application for Licensure by Universal Recognition

1) Tamryn Menzel, M.A.

The Committee proceeded with a substantive review of the application. Upon review, the Committee noted that the applicant may not meet the requirement of the statute as her Michigan verification indicates she has been licensed in that jurisdiction for less than one year. The Committee questioned whether she could apply through the traditional process; Staff indicated that option would be presented to her, but also noted that if a FAIR letter is issued to pause the substantive review time frame, the applicant can elect to either wait for her one-year anniversary of licensure in Michigan, or apply through the traditional process.

7. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING RECENT UPDATES FROM THE BEHAVIOR ANALYST CERTIFICATION BOARD (BACB)

Ms. Paakkonen noted there were only two updates consisting of sharing of information concerning upcoming training opportunities for regulators, and an update on testing capacity and availability for the certification examination.

8. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING LICENSURE AND REGULATORY ISSUES RELATIVE TO COVID-19

Ms. Paakkonen notified the Committee that the directors of the agencies occupying the 1740 West Adams building were advised that the ventilation system is quite old and it should be assumed it not effective at filtering the COVID-19 virus when airborne. She stated that the directors were informed that this information should be considered when determining whether to resume in-person public meetings.

9. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING COMMITTEE VACANCY

Ms. Paakkonen reported that she has received no updates relative to appointment to fill the Committee vacancy.

10. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING DIFFERENCES BETWEEN BACB MAINTENANCE OF CERTIFICATION REQUIREMENTS, AND BOARD OF PSYCHOLOGIST EXAMINERS CONTINUING EDUCATION REQUIREMENTS

This item will be addressed on a future agenda of the Committee.

11. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING POTENTIAL REVISIONS TO BEHAVIOR ANALYST ADMINISTRATIVE RULES

This item will be addressed on a future agenda of the Committee.

12. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION ON DRAFT REVISIONS TO BEHAVIOR ANALYST APPLICATION FOR LICENSURE

This item will be addressed on a future agenda of the Committee.

13. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION ON DRAFT REQUEST TO THE ASSOCIATION OF STATE AND PROVINCIAL PSYCHOLOGY BOARDS TO PERMIT CBA MEMBER ATTENDANCE AT THE 2020 ANNUAL MEETING

Ms. Paakkonen advised the Committee that ASPPB has asked for a formal request to allow the Committee to attend the meeting. The Committee members agreed by consensus to submit the draft letter prepared by Ms. Paakkonen requesting the ASPPB Board determine whether to permit the CBA members who do not serve on the Board to attend the meeting. The discussion reflected that this would be a rare opportunity for behavior analyst regulators to learn more about processes, issues, and best practices.

14. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING CURRENT PUBLIC MEETINGS AND PUBLIC SAFETY ORDERS

Ms. Paakkonen reported that there are no updates on this topic, but that she views Governor Ducey's weekly briefings and responds to agency directives issued by his office and by the Arizona Department of Administration.

15. NEW AGENDA ITEMS FOR FUTURE MEETINGS

The Committee requested an item be added to the next agenda addressing, that when conducting an investigation concerning a licensee, whether and under what circumstances it may initiate additional investigations when discovering possible unprofessional conduct committed by other licensees.

16. ADJOURNMENT

MOTION: Dr. Davey moved to adjourn the meeting. Dr. Stenhoff seconded the motion.

VOICE VOTE: The motion was approved 4-0. The meeting adjourned at 1:11 p.m.