

1 **BEFORE THE BOARD OF PSYCHOLOGIST EXAMINERS**
2 **FOR THE STATE OF ARIZONA**

3 In the Matter of:)
4 **Zachary Reineke, M.Ed., BCBA**) **CASE NO. 23-48**
5 Holder of License No. BEH-000407) **CONSENT AGREEMENT AND**
6 for the Practice of Behavior Analysis) **ORDER FOR PROBATION,**
7 in the State of Arizona) **PRACTICE RESTRICTIONS,**
) **PRACTICE MONITORING, AND**
) **CONTINUING EDUCATION**

8 On October 6, 2023, the Arizona Board of Psychologist Examiners (“Board”) met
9 virtually in open session to discuss the above-referenced case. Zachary Reineke, M.Ed., BCBA,
10 (“Respondent”) appeared virtually with his attorney, Sara Stark, Esq. The parties agree to enter
11 into this Consent Agreement in lieu of further administrative proceedings.

12 **JURISDICTION**

13 1. The Board is the state agency authorized pursuant to Arizona Revised Statutes
14 (“A.R.S.”) § 32-2091 *et seq.*, and the rules promulgated thereunder in the Arizona Administrative
15 Code (“A.A.C.” or “rules”) at R4-26-401 *et seq.*, to regulate and control the licensing of behavior
16 analysts in the State of Arizona.

17 2. Respondent is the holder of license number BEH-000407 for the practice of
18 behavior analysis in the State of Arizona.

19 3. The Board has personal and subject matter jurisdiction over Respondent pursuant
20 to A.R.S. § 32-2091, *et seq.*, and the rules at A.A.C. R4-26-401, *et seq.*

21 **RECITALS**

22 Respondent understands and agrees that:

23 1. The Board and Respondent enter into this Consent Agreement to promptly and
24 judiciously resolve these matters, consistent with the public interest and the statutory
25 requirements of the Board.

26 2. Respondent has the right to consult with an attorney before entering into this
27 Consent Agreement.
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1 3. Respondent has a right to a formal public hearing concerning this case where he
2 could present evidence and cross-examine witnesses. Respondent irrevocably waives any right
3 to such a hearing, rehearing or review or to any judicial review or other appeal of this matter upon
4 this Consent Agreement becoming effective.

5 4. Although Respondent does not agree that all of the allegations in Complaint No.
6 23-48 are supported by the evidence, Respondent acknowledges that it is the Board's position
7 that if these matters proceeded to formal hearing, the Board could offer sufficient evidence to
8 support a conclusion that certain of Respondent's conduct constituted unprofessional conduct.
9 Therefore, Respondent has agreed to enter into this Consent Agreement as an economical and
10 practical means of resolving the issues alleged in the Complaint.

11 5. This Consent Agreement shall be subject to the Board's approval and shall be
12 effective only when signed by the Executive Director and accepted by the Board. In the event
13 that the Board does not approve this Consent Agreement, it is withdrawn and shall be of no
14 evidentiary value and shall not be relied upon nor introduced in any action by any party, except
15 that the parties agree that if the Board rejects this Consent Agreement and this case proceeds
16 to hearing, Respondent shall assert no claim that the Board was prejudiced by its review and
17 discussion of this document or any records relating thereto.

18 6. The Consent Agreement, once approved by the Board, evidenced by the signature
19 of the Executive Director or her designee and signed by the Respondent, shall constitute a public
20 record that may be disseminated as a formal action of the Board and shall be reported to the
21 National Practitioner Data Bank and the Behavior Analyst Certification Board.

22 7. Respondent voluntarily enters into this Consent Agreement for the purpose of
23 avoiding the expense, uncertainty, and prolonged time involved in further administrative
24 proceedings. The issues contained herein are resolved by settlement and not actually litigated.
25 Any allegations and findings herein may not be used for *res judicata* or collateral estoppel effect
26 in any subsequent civil proceedings for any claims of professional liability or negligence by or
27 on behalf of Complainant(s).
28

1 8. Respondent acknowledges and agrees that the acceptance of this Consent
2 Agreement is solely to settle this Board matter and does not preclude the Board from instituting
3 other proceedings as may be appropriate now or in the future.

4 9. Respondent understands that this Consent Agreement does not constitute a
5 dismissal or resolution of any other matters currently pending before the Board, if any, and does
6 not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction
7 regarding any other pending or future investigation, action or proceeding.

8 10. Furthermore, and notwithstanding any language in this Consent Agreement, this
9 Consent Agreement does not preclude in any way any other state agency or officer or political
10 subdivision of this state from instituting proceedings, investigating claims, or taking legal action
11 as may be appropriate now or in the future relating to this matter other matters concerning
12 Respondent, including but not limited to, violations of Arizona's Consumer Fraud Act.
13 Respondent acknowledges that, other than with respect to the Board, this Consent Agreement
14 makes no representations, implied or otherwise, about the views or intended actions of any other
15 state agency or officer or political subdivision of the state relating to this matter or other matters
16 concerning Respondent.

17 11. Respondent acknowledges and agrees that, upon signing this Consent Agreement
18 and returning this document to the Board's Executive Director, he may not revoke acceptance of
19 the Consent Agreement or make any modifications to the document regardless of whether the
20 Consent Agreement has been signed by the Executive Director. Any modification to this
21 original document is ineffective and void unless mutually agreed by the parties in writing.

22 12. This Consent Agreement is subject to the approval of the Board and is effective
23 only when accepted by the Board and signed by the Executive Director. In the event that the
24 Board does not approve this Consent Agreement, it is withdrawn and shall be of no evidentiary
25 value and shall not be relied upon nor introduced in any action by any party, except that the
26 parties agree that should the Board reject this Consent Agreement and this case proceeds to
27 hearing, Respondent shall assert no claim that the Board was prejudiced by its review and
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1 discussion of this document or any records relating thereto.

2 13. If a court of competent jurisdiction rules that any part of this Consent Agreement
3 is void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full
4 force and effect.

5 14. Respondent understands that any violation of this Consent Agreement constitutes
6 unprofessional conduct and may result in disciplinary action, pursuant to A.R.S. §32-
7 2091(12)(aa).
8

9 15. Respondent agrees that the Board will adopt the following Findings of Fact,
10 Conclusions of Law and Order.
11

12 ACCEPTED AND AGREED BY RESPONDENT:
13

14 

15 _____
16 Zachary Reineke, M.Ed.
17 Respondent

9/24/2023

18 _____
19 Date:
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1 **FINDINGS OF FACT**

2 1. Respondent was issued his behavior analyst license by the Board in 2019. At the
3 time this complaint was received, Respondent worked at Team4Kids Pediatric Therapy
4 (“Agency”) in the role of ABA Operations Director.

5 2. On April 15, 2023, A.G. filed a complaint against Respondent. A.G. was formerly
6 employed as a Registered Behavior Technician at Agency from December 2020 – March 2023.
7 The complaint alleged, in part, that Respondent failed to provide appropriate supervision of, and
8 support to A.G. in her role as the RBT for a minor male client (“Client”), whose case was
9 particularly complex. Additionally, Respondent failed to adequately manage the overall behavior
10 analytic care plan for Client.

11 3. This matter came before the Committee on Behavior Analysis (“CBA”) in July and
12 August of 2023. The Committee identified concerns with multiple aspects of this case to include:

- 13 a. Several attempts by A.G. to advocate for Client went unaddressed by
14 Respondent, constituting negligence on his part.
- 15 b. Respondent was negligent in his supervision of this case, in that he provided
16 insufficient supervision and assistance to A.G. and failed to assess her
17 competency to provide services to Client.
- 18 c. Respondent’s practice management was inadequate in that the clinical record
19 for Client was missing several critical components including progress notes and
20 incident reports.
- 21 d. The billing records contained in Client’s chart reflect various billing mistakes
22 and use of improper billing codes; Respondent does not appear to have adequate
23 knowledge of appropriate billing practices.
- 24 e. Respondent practiced beyond the scope of his competency in this case.
- 25 f. The reports/assessments completed by Respondent for Client were filled with
26 errors, contained mostly the same information and did not reflect any progress
27 updates on the part of Client.
- 28

1 g. Respondent failed to demonstrate to the Committee he understands how to
2 provide appropriate direct supervision.

3 h. Respondent appeared to be vilifying A.G. despite her attempts to do what she
4 thought was in the best interest of Client.

5 4. On October 6, 2023, the Board met in open session to review the complaint and
6 accepted the Committee's recommendation to issue this Consent Agreement.

7 **CONCLUSIONS OF LAW**

8 1. The conduct and circumstances above constitute a violation of A.R.S. §32-
9 2091(12)(e), which is gross negligence in the practice of a behavior analyst.

10 2. The conduct and circumstances above constitute a violation of A.R.S. §32-
11 2091(12)(h), which is failing or refusing to maintain and retain adequate business, financial or
12 professional records pertaining to the behavior analysis services provided to a client.

13 3. The conduct and circumstances above constitute a violation of A.R.S. §32-
14 2091(12)(o), which is providing services that are unnecessary or unsafe or otherwise engaging in
15 activities as a behavior analyst that are unprofessional by current standards of practice.

16 4. The conduct and circumstances above constitute a violation of A.R.S. §32-
17 2091(12)(q), which is representing activities or services as being performed under the licensee's
18 supervision if the behavior analyst has not assumed responsibility for them and has not exercised
19 control, oversight and review.

20 5. The conduct and circumstances above constitute a violation of A.R.S. §32-
21 2091(12)(dd), which defines unprofessional conduct as violating an ethical standard adopted by
22 the Board as it relates to the Behavior Analyst Certification Board's Professional and Ethical
23 Compliance Code for Behavior Analysts. The conduct set forth above is a violation of the
24 following ethical code provisions:

- 25 a. 1.02 Conforming with Legal and Professional Requirements: Behavior
26 analysts follow the law and the requirements of their professional community
27 (e.g., BACB, licensure board).
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1 b. 2.06 Accuracy in Service Billing and Report: Behavior analysts identify their
2 services accurately and include all required information on reports, bills,
3 invoices, requests for reimbursement, and receipts. They do not implement or
4 bill nonbehavioral services under an authorization or contract for behavioral
5 services. If inaccuracies in reporting or billing are discovered, they inform all
6 relevant parties (e.g., organizations, licensure boards, funders), correct the
7 inaccuracy in a timely manner, and document all actions taken in this
8 circumstance and the eventual outcomes.

9 **ORDER**

10 1. Pursuant to A.R.S. § 32-2091.09(5), the Board has determined that the Respondent's
11 conduct in Complaint No. 23-48 warrants disciplinary action. Based on the foregoing Findings of
12 Fact and Conclusions of Law, IT IS ORDERED THAT:

13
14 2. **NOTICE TO EMPLOYER:** Within five (5) calendar days of the effective date of
15 this Consent Agreement Respondent shall provide his current employer with a copy of the
16 Consent Agreement. Within ten (10) calendar days of the employer's receipt of a copy of the
17 Consent Agreement, Respondent shall ensure that the employer provides a written notification to
18 the Board that it has received and reviewed the Consent Agreement. Should Respondent change
19 employers during the period of probation, he shall provide a copy of the Consent Agreement to
20 his new employer within five (5) calendar days of beginning his new employment. Within in ten
21 (10) calendar days of the new employer's receipt of a copy of the Consent Agreement, Respondent
22 shall ensure that the new employer provides written notification to the Board that is has received
23 and reviewed the Consent Agreement.

24 3. **PROBATION:** Respondent's license as a behavior analyst is placed on probation
25 for a minimum period of twelve (12) months from the effective date of this Consent Agreement,
26 unless otherwise ordered by the Board. The effective date of this Consent Agreement is the date
27 that it is signed by the Board's Executive Director, or her designee, on behalf of the Board.
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1 4. **PRACTICE RESTRICTIONS:** While on probation, Respondent shall not
2 complete functional behavior assessments or any other assessments independently; such
3 assessments shall either be conducted by another licensed behavior analyst, or they shall be
4 synchronously observed and co-signed by another licensed behavior analyst at the agency where
5 Respondent works. Additionally, Respondent shall not provide supervision to any students or
6 any trainees for licensure and/or certification purposes.

7 5. **CONTINUING EDUCATION:** In addition to the continuing education
8 requirements found in A.A.C. R4-26-409 for license renewal, within 90 days of the effective date
9 of this Order, Respondent shall complete an additional fifteen (15) clock hours of continuing
10 education in the content areas of assessments, caregiver training, case management/oversight,
11 coordination of care, recordkeeping/documentation practices, supervision, and understanding
12 client needs. These 15 additional hours of continuing education shall be **pre-approved** by the
13 Executive Director or designee. Within one week of completion of the additional continuing
14 education, Respondent shall provide the Board with verification of completion of these hours.
15 The continuing education completed as part of this matter may not be used towards the
16 requirement for future license renewal applications.

17 6. **PRACTICE MONITOR:** While on probation, Respondent shall contract with a
18 Practice Monitor **pre-approved** by the Board's Executive Director or designee and who will
19 provide compliance training and professional guidance to Respondent with respect to billing, case
20 management, coordination of care, functional behavioral assessments, maintaining adequate
21 clinical records/recordkeeping, supervision, and any other topic deemed pertinent by the Practice
22 Monitor. The Practice Monitor shall submit to the Executive Director a detailed monitoring
23 program outlining the monitoring goals and objectives and how achievement of them will be
24 measured, the milestones associated with those goals and objectives, and the specific activities
25 Respondent will be required to complete. The written monitoring program shall be provided to
26 the Executive Director within thirty (30) days of contracting with Respondent to serve as Practice
27 Monitor. Additionally, the Practice Monitor shall review all applicable meeting audio and/or
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1 minutes for Complaint no. 23-48, which will be provided by Board staff, in advance of submitting
2 the written monitoring plan.

3 Respondent shall submit the name of the licensed behavior analyst who shall serve as
4 the Practice Monitor to the Board's Executive Director for approval within ten (10) business
5 days of the effective date of this Order. Within twenty (20) business days of the effective date
6 of this Order, Respondent shall enter into the Practice Monitor agreement. The Practice Monitor
7 shall have no familial or business relationship with Respondent. The Executive Director is
8 authorized to grant one extension to Respondent, up to an additional ten (10) business days, to
9 submit the name of a proposed practice monitor.

10 Respondent shall meet with the Practice Monitor at least twice per month for a minimum
11 of two hours each session during the probationary period; at least one of these sessions shall be
12 in person face-to-face at Respondent's agency. The Practice Monitor shall review and discuss
13 with Respondent the continuing education he has completed to date under paragraph 5 and assess
14 whether Respondent achieved the learning objectives. The Practice Monitor shall review a
15 minimum of five of Respondent's recent patient records each quarter and discuss with
16 Respondent the Practice Monitor's findings, conclusions, and recommendations for
17 improvement.

18 The Practice Monitor shall submit to the Board quarterly written reports of the meetings,
19 to include topics covered and any modifications made to Respondent's practice. The Practice
20 Monitor shall provide written reports to the Board within 30 days after the end of each
21 quarter. The first quarter shall begin on the date of the first session between the Respondent and
22 the Practice Monitor. Before the conclusion of the probationary period, the Practice Monitor is
23 to complete a final written report to the Board summarizing their interaction with Respondent,
24 topics discussed, areas of progress, matters of remaining concern, and overall impressions. The
25 final report shall be submitted to the Board at least 30 days prior to the Board meeting at which
26 the Board will consider Respondent's written request to terminate probation as set forth in
27 paragraph 7. Respondent shall present this Order to the Board-approved Practice Monitor before
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1 the first meeting. The first meeting between Respondent and the Practice Monitor shall occur
2 within 45 days of the effective date of this Order.

3 If, during the probationary period, the Practice Monitor is unable or unwilling to continue
4 to act as Respondent's Practice Monitor, within ten (10) business days of the Practice Monitor's
5 termination of the practice monitor relationship, Respondent shall contact the Executive Director
6 in writing and present another potential Practice Monitor for approval. Respondent shall notify
7 the Board of her new Practice Monitor within twenty (20) business days of receiving approval.
8 Any sessions between Respondent and the Practice Monitor that occur prior to the effective date
9 of this Consent Agreement shall not count toward those sessions required under this Consent
10 Agreement

11 7. **TERMINATION OF PROBATION:** Unless otherwise ordered by the Board,
12 upon the passage of twelve months and upon the monitor's recommendation, Respondent may
13 petition the Board, in writing, and request termination from probation. If the Board determines
14 that Respondent has not complied with the requirements of this Consent Agreement, the Board
15 may either (a) continue the probation, or (b) institute proceedings for noncompliance with this
16 Consent Agreement, which may result in the suspension, revocation, or other disciplinary or
17 remedial action.
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19 8. **EFFECTIVE DATE:** Respondent understands that this Consent Agreement shall
20 not become effective unless and until adopted by the Board and executed on behalf of the Board.
21 Any modification to this original document is ineffective and void unless mutually approved by
22 the parties in writing.

23 9. **CONSIDERATION IN FUTURE ACTIONS:** Respondent understands that this
24 Consent Agreement, or any part thereof, may be considered in any future disciplinary action
25 against him.

26 10. **FINAL RESOLUTION:** This Consent Agreement constitutes a final resolution
27 of these disciplinary matters but does not constitute a dismissal or resolution of other matters
28 currently pending before the Board, if any, and does not constitute any waiver, expressed or

1 implied, of the Board’s statutory authority or jurisdiction regarding any other pending or future
2 investigations, actions, or proceedings. Further, this Consent Agreement does not preclude any
3 other agency, subdivision, or officer of this State from instituting other civil or criminal
4 proceedings with respect to the conduct that is the subject of this Consent Agreement.

5 11. **TIME:** Time is of the essence with regard to this Consent Agreement.

6 12. **COSTS:** Respondent shall be responsible for all costs incurred as a result of his
7 compliance with this Consent Agreement.

8 13. **NON-COMPLIANCE:** If Respondent fails to comply with the terms of this
9 Consent Agreement, the Board may properly institute proceedings for noncompliance, which may
10 result in suspension, revocation, or other disciplinary or remedial actions. Violation of this
11 Consent Agreement is a violation of A.R.S. § 32-2091(12)(aa) (“violating a formal board order,
12 consent agreement, term of probation or stipulated agreement”).

13 14. **NON-RENEWAL OR LATE RENEWAL:** If Respondent fails to renew his
14 license while under the terms of this Consent Agreement and subsequently applies for late renewal
15 of license or a new license, the remaining terms of this Consent Agreement shall be imposed if
16 the late renewal or reapplication for licensure is granted.

17 15. **TOLLING:** If Respondent for any reason stops practicing behavior analysis in
18 Arizona for more than 30 consecutive days or leaves Arizona to reside or practice behavior
19 analysis outside of Arizona, the periods of temporary or permanent residency or practice outside
20 Arizona or the non-practice within Arizona do not reduce the duration of the terms under this
21 Order. Respondent shall notify the Board in writing within five (5) business days of the dates of
22 departure or the dates of non-practice in Arizona.

23 16. **PUBLIC RECORD:** This Consent Agreement is a public record that may be
24 publicly disseminated as a formal action of the Board and reported to the National Practitioner
25 Data Bank and the Behavior Analyst Certification Board.

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28 DATED this 11 day of October 2023.

ARIZONA BOARD OF
PSYCHOLOGIST EXAMINERS

By: *Heidi Herbst Paakkonen*
Heidi Herbst Paakkonen
Executive Director

ORIGINAL filed electronically
this **11** day of **October** 2023 with:

Arizona State Board of Psychologist Examiners
1740 W. Adams St., Suite 3403
Phoenix, Arizona 85007

COPY mailed by USPS regular mail
this **11** day of **October** 2023 to:

Zachary Reinke, M.Ed., BCBA
Respondent
Address on Record

COPY of the foregoing mailed by USPS regular mail
this **11** day of **October** 2023 to:

Sara Stark, Esq.
Chelle Law, PLC
5425 East Bell Road, Suite 107
Phoenix, AZ 85254
Attorney for Respondent

COPY of the foregoing via email (jeanne.galvin@azag.gov)
this **11** day of **October** 2023 to:

Jeanne M. Galvin
Assistant Attorney General
2005 North Central Ave. SGD/LES
Phoenix, Arizona 85004
Attorney for the State of Arizona

By: *Jennifer Michaelson*