

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

3  
4    In the Matter of:

Case No. 03A-0040-PSY

5    **Frank Powers, Ph.D.,**

**CONSENT AGREEMENT, FINDINGS  
OF FACT, CONCLUSIONS OF LAW,  
AND ORDER**

6    Holder of License No. 1813  
7    For the Practice Psychology  
8    In the State of Arizona

Respondent.

9  
10           On June 4, 2005, the Arizona Board of Psychologist Examiners ("Board") discussed Case  
11    No. 03A-0040-PSY regarding Frank Powers, Ph.D. ("Dr. Powers" or "Respondent") who was  
12    present at the Board proceedings with his attorney, Charles Buri. The Board voted to offer  
13    Licensee the opportunity to enter into the following Consent Agreement and Order of Discipline  
14    in lieu of further litigation, and in resolution of the case herein.

15                                   **JURISDICTION**

- 16           1.    The Board is authorized to regulate the practice of psychology in Arizona  
17    pursuant to A.R.S. §§ 32-2061, *et seq.*
- 18           2.    Dr. Powers is the holder of license number 1813 for the practice of psychology in  
19    Arizona.
- 20           3.    The Board has personal and subject matter jurisdiction over Respondent pursuant  
21    to A.R.S. § 32-2061 *et seq.*


22                                   **CONSENT AGREEMENT**


- 23           1.    The Board and Respondent enter into this Consent Agreement in order to  
24    promptly and judiciously resolve this matter, consistent with the public interest and the statutory  
25    requirements of the Board.
- 26           2.    Pursuant to A.R.S. §§ 32-2081(G), and 41-1092.07(F)(5), the Board will adopt  
the Findings of Fact, Conclusions of Law and Order set forth below.

1 3. Respondent has the right to consult with his attorney prior to entering into this  
2 Consent Agreement. He has read and understands the Consent Agreement, Findings of Fact,  
3 Conclusions of Law, and Order, and makes this agreement freely and voluntarily. He  
4 irrevocably waives his right to a hearing, rehearing, or judicial review.

5 4. The Consent Agreement and Order will be effective when signed by the Board's  
6 Executive Director. The Consent Agreement, Findings of Fact, Conclusions of Law, and Order  
7 are a public record.

8 **ARIZONA BOARD OF**  
9 **PSYCHOLOGIST EXAMINERS**

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11 \_\_\_\_\_  
12 Frank Powers, Ph.D.

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11 \_\_\_\_\_  
12 Maxine McCarthy  
13 Executive Director

12 6/10/05  
13 \_\_\_\_\_  
14 Date

12 June 8, 2005  
13 \_\_\_\_\_  
14 Date

14 **FINDINGS OF FACT**

15 1. On November 20, 2003, the Board received notices of settlement of a Superior  
16 Court malpractice action against Dr. Powers and Marilyn Kieffer-Andrews, Ph.D. brought by the  
17 surviving parents of M.C. The notice, required by A.R.S. § 12-570, stated that M.C., a minor,  
18 committed suicide on September 14, 2000, while under the care of Dr. Powers and Dr. Kieffer-  
19 Andrews. The Board opened investigations regarding Dr. Powers and Dr. Kieffer-Andrews, who  
20 is also a licensed psychologist.

21  
22 2. M.C., who was seventeen years old, had been arrested in early 2000 for  
23 shoplifting two small, inexpensive items, even though his mother had given him money for the  
24 purchase. His parents saw this conduct as a "red-flag" that was out of character for their son.  
25 They grounded him and took away his privileges. The parents sought treatment for him with Dr.  
26 Powers.

1 3. Dr. Powers saw M.C. and/or his parents in the office on June 12, 19, 20, 26, and  
2 July 5 and 18, 2000. He then went on vacation for about a month.

3 4. Before going on vacation, Dr. Powers referred M.C. to either Dr. Anna Scherzer  
4 or Dr. Kieffer-Andrews for evaluation and medication. M.C. sought treatment from Dr. Kieffer-  
5 Andrews.

6 5. After Dr. Powers returned from vacation in about mid-August, he saw M.C.  
7 and/or his parents on August 24 and 28 and September 5 and 11, 2000. He has no notes for those  
8 sessions.

9 6. Dr. Powers' billing ledger for M.C. shows charges on six dates (June 12 and 19,  
10 July 5, 12, and 18) for which no service is described on the ledger. For all other charges on the  
11 billing ledger, the only "description" of services listed is "Mother," "Father," or M.C.'s name.

12 7. Dr. Powers charged a fee for a session on July 12 because M.C. was a "no-show"  
13 for his appointment on that date. Dr. Powers' statement for July 12 reflects "no show" in pencil.  
14 Dr. Powers contends that he asked M.C. about the missed July 12 appointment at the July 18  
15 session.

16 8. Dr. Powers' records for M.C. and his parents consist of the following documents:

- 17 a. Intake information form completed by Father,  
18 b. Billing ledger,  
19 c. Payment receipts,  
20 d. Fax cover sheet from Father to "Ramon" with attached "Service  
21 Confirmation/Credit Application,"  
22 e. A memorial service card for M.C. dated September 21, 2000,  
23 f. Two and one-third pages of handwritten session notes, and  
24 g. Material on the illegal drug Ecstasy.

25 9. The handwritten session notes are dated as follows:

<u>Date</u>	<u>Name</u>
Undated	not stated
June 12	M.C.
June 19	M.C.
June 20	Father and Mother
June 26	one note for M.C., one note for Father and Mother
July 5	M.C.
July 18	M.C.

1           10. Dr. Powers wrote the seven narrative notes all at the same time sometime after  
2 July 18, 2000, based on notes taken during session.

3           11. At M.C.'s first visit with Dr. Powers on June 12, 2000, Father filled out an intake  
4 information form, providing his own name, address, social security number, date of marriage,  
5 and related information. The only question on the form related to health care history were as  
6 follows: physician's name and phone number, medications taken presently (allergy), major  
7 health problems (none), have you been in treatment before (yes), with whom (left blank), when  
8 (last year), describe your reason for seeking treatment this time (anger management).

9           12. Dr. Powers failed to adequately document the history of M.C.

10          13. In Dr. Powers' records, the only diagnosis for M.C. is written on five receipts for  
11 payment. Under the heading "Diagnosis DSM-III-R Manual," Dr. Powers wrote "300.02,"  
12 which is the diagnostic code for generalized anxiety disorder. The DSM-III-R Manual had been  
13 replaced years earlier with a subsequent edition. Dr. Powers contends that diagnosis was based  
14 on the DSM-IV manual. Dr. Powers acknowledges that the form was outdated, but states that  
15 the diagnosis code was the same under either version of the manual.

16          14. Dr. Powers recommended that M.C.'s parents treat M.C. more like an adult. Dr.  
17 Powers denies that he recommended removing M.C.'s grounding or curfew.

18          15. Dr. Powers' notes dated June 26, 2000, indicate that M.C. talked about his  
19 depression at that session. According to Dr. Powers' subsequent statements, he asked M.C. on  
20 June 26 whether he was then having any suicidal ideation, and the boy said no. Dr. Powers  
21 never asked him again about any thoughts of suicide. Dr. Powers also met with M.C.'s parents  
22 on June 26, 2000.

23          16. Dr. Powers failed to note at all in his records that he referred M.C. to Dr. Kieffer-  
24 Andrews or Dr. Scherzer in mid-July 2000.

25          17. Dr. Powers' never communicated with Dr. Kieffer-Andrews about M.C.'s care or  
26 treatment while the boy was alive.

1 18. Upon his return from vacation, Dr. Powers met with M.C.'s mother on August 24,  
2 2000. The Mother showed Dr. Powers' drug paraphernalia that she found in the boy's bedroom.  
3 Respondent also met with M.C. on August 24, 2000. M.C. reported to Dr. Powers that things  
4 were going well and that the medication was helping. Dr. Powers contends that M.C.'s parents  
5 never told him that M.C. was a risk for suicide.

6 19. Mother testified in her deposition that she told Dr. Powers that she believed M.C.  
7 was not taking his medication. Dr. Powers testified in his deposition that the Mother never told  
8 him this.

9 20. On September 5, 2000, Dr. Powers met with M.C.'s parents and then M.C.  
10 M.C.'s mother discussed with Dr. Powers her concern that M.C. may be taking Ecstasy, an  
11 illegal drug. She also expressed concern that M.C. was attending raves, was dressing differently  
12 and had new friends. She said M.C. had admitted to attending raves, but denied using Ecstasy.  
13 Doctor Powers told the parents that he did not have information about Ecstasy, but he would find  
14 out about it. When M.C. arrived, the parents told him of their decision to request random drug  
15 screening. M.C. became angry and although Dr. Powers contends he attempted to intervene,  
16 M.C. left the session angry.

17 21. On September 11, 2000, Dr. Powers discussed with the Mother the potential  
18 danger of Ecstasy stating it could nullify the serotonin built up in M.C.'s brain by the Zoloft and  
19 negate any elevation in mood created by the antidepressant.

20 22. In the week before M.C. killed himself, his mother stated that she saw the  
21 following note in big orange letters on his computer screen: "Don't bother crying at my funeral,  
22 your fucked up son (M)." Dr. Powers denies that he was informed of this message prior to  
23 M.C.'s death.

24 23. Sometime during the night of September 13-14, 2000, M.C. hanged himself in the  
25 closet of his bedroom. He was found dead on the morning of September 14, one week before his  
26 eighteenth birthday.

1 24. M.C.'s parents called Dr. Powers on the morning of September 14, 2000, to  
2 inform him of M.C.'s suicide and to request his help. Dr. Powers met with M.C.'s parents at  
3 their house that morning, and again at his office on September 25, 2000.

4 25. Dr. Powers fell below the current standard of practice by:

- 5 a. Failing to communicate with Dr. Kieffer-Andrews, to whom he had  
6 referred M.C.; and to collaborate or form a joint treatment plan with her;
- 7 b. Failing to follow up with Dr. Kieffer-Andrews regarding the care of M.C.;
- 8 c. Failing to adequately document a coherent treatment plan;
- 9 d. Failing to document a contemporaneous record (or any record, in some  
10 instances) of M.C.'s treatment;
- 11 e. Using a consent form that contained information about both Father and M.C.  
12 that made it difficult to identify who was actually the client, contained very  
13 little information as to the reason for the referral, contained vague statements  
14 regarding confidentiality and placed confidentiality decisions on the client,  
15 contained incorrect information regarding records retention, and failed to  
16 enumerate the client's rights;
- 17 f. Using billing statements that failed to identify the nature of the service  
18 conducted, the identity of the client, and the amount of the charges;
- 19 g. Using "DMS-III-R" on billing statements when the DSM-III-R was replaced  
20 years earlier with a later version.

21 26. A reasonable and prudent psychologist in the circumstances would have  
22 communicated with Dr. Kieffer-Andrews, collaborated or formed a joint treatment plan, and  
23 followed up with her regarding M.C.; adequately documented a coherent treatment plan;  
24 documented a contemporaneous record of M.C.'s treatment; used an adequate consent form that,  
25 among other things, identified who is actually the client, clearly noted the reason for the referral,  
26 contained true and accurate statements regarding confidentiality and records retention, and  
provided adequate information upon which to base consent; used billing statements that  
identified the nature of the services conducted, the identity of the client, and the amount of the  
charges; not used "DMS-III-R" on billing statements when the DSM-III-R was replaced years  
earlier with a later version.



1 (iii) Not be the same person as Respondent's psychotherapist, if any;  
2 and

3 (iv) Practice in the same field of practice as Respondent.

4 B. Minimum Contact Hours; Duties: Respondent shall meet in person with  
5 the monitor at least one hour per week for one year and thereafter at least one hour every two  
6 weeks. At the first meeting, at a minimum, Respondent shall discuss with the monitor the case  
7 conceptualizations and treatment plans for all current clients. Thereafter, at each meeting, at a  
8 minimum, Respondent and the monitor shall discuss:

9 (i) The case conceptualizations, treatment plans, and progress of all  
10 clients for whom Respondent provided psychological services  
11 since the last meeting, and

12 (ii) All evaluations, assessments, and other psychological services  
13 performed or provided by Respondent since the last meeting;

14 (iii) The monitor shall make and maintain records of the monitoring  
15 meetings.

16 C. Monitoring Plan: Within 15 days of the Board's approval of a monitor,  
17 the monitor shall submit to the Board or its designee a plan by which Respondent's practice shall  
18 be monitored consistent with this Order.

19 D. Reports: The monitor shall submit monthly written reports to the Board  
20 regarding the appropriateness of Respondent's practice of psychology, including at a minimum,  
21 Respondent's case conceptualizations, treatment plans, client progress, evaluations, assessments,  
22 other psychological services performed or provided by Respondent during the monitoring period,  
23 and issues or areas of concern to the monitor. The reports must also provide the dates and  
24 duration of all monitoring meeting and contacts. The reports must be received at the Board's  
25 office not later than the first day of each month.  
26



1 E. Costs: Respondent shall promptly pay all costs associated with this  
2 monitoring requirement. Failure to promptly pay these costs shall be considered a violation of  
3 probation.

4 F. Replacement Monitor: If the monitor quits or is otherwise no longer  
5 available, Respondent shall obtain approval from the Board or its designee for a new monitor  
6 within 30 days. If no new monitor is approved within 30 days, Respondent shall not practice  
7 until a new monitor has been approved by the Board or its designee. During this period of non-  
8 practice, probation will be tolled and will not commence again until the period of non-practice is  
9 completed.

10  
11 3. Practice Management Consultant: Respondent shall engage the services of a  
12 practice management consultant approved by Board staff in consultation with the Board's  
13 chairperson.

14 A. Promptly following the date of the Order, Respondent shall meet in person  
15 with the consultant, and shall meet two additional times at 90 days and at 270 days after the date  
16 of this Order for the purpose of evaluation and consultation.

17 B. Promptly following the initial meeting with Respondent, Respondent shall  
18 cause the consultant to submit written recommendations to the Board and to Respondent  
19 regarding suggestions for improvement of Respondent's record-keeping system, billing system,  
20 copying, filing and all other tasks associated with the practice of psychology, including the  
21 revision of Respondent's psychology practice forms to document session notes, records or other  
22 communications with clients and related practice forms.

23 C. Promptly following the consultations at 90 and 270 days, Respondent shall  
24 cause the consultant to submit detailed written reports to the Board regarding Respondent's  
25 compliance and progress regarding the consultant's written recommendations.

26 4. Education: During the term of probation, Respondent shall successfully complete  
eighteen (18) continuing education hours in suicide assessment which includes risk assessment

1 of adolescents and eighteen (18) continuing education hours in alcohol and chemical  
2 dependence. Respondent shall obtain prior approval of the courses from Board staff in  
3 consultation with the Board's chairperson. . In person classroom attendance is specifically  
4 required. Respondent shall provide written documentation from the sponsor that he attended the  
5 continuing education courses as ordered. The continuing education must be in addition to the  
6 continuing education required for license renewal.

7       5.     Restriction of Client Population: Respondent's practice of psychology shall not  
8 include providing psychological services to minors during the term of his probation.

9       6.     Compliance Certification: Thirty days after the effective date of this Order and  
10 on first day of each month thereafter, Respondent shall submit a written statement under penalty  
11 of perjury to the Board certifying whether Respondent has complied with this Order. The  
12 statement must be received at the Board's office by the due date.

13       7.     Access: Upon reasonable request, the Board and its representative shall have  
14 reasonable access to Respondent's records related to the practice of psychology.

15       8.     Payment: Respondent shall promptly pay all costs of compliance with this Order.  
16 Failure to promptly pay the costs shall be considered a violation of probation.

17       9.     Current Address and Phone Number: Within five days of changing his home  
18 or business address or telephone number, Respondent shall notify the Board in writing.

19       10.    Non-renewal and Reapplication: If Respondent fails to renew his license while  
20 under probation and subsequently applies for a license, the remaining term of probation shall be  
21 imposed if the application for license is granted.

22       11.    Appearance: Upon reasonable notice, Respondent shall appear before the Board  
23 regarding his compliance with this Order.

24       12.    Compliance with Law: Respondent shall obey all state and federal laws  
25 pertaining to the practice of psychology.

26       13.    Tolling for periods of non-practice: If Respondent for any reason stops practicing  
psychology in Arizona for more than 30 days or leaves Arizona to reside or practice psychology

1 outside Arizona, the periods of temporary or permanent residency or practice outside Arizona or  
2 the non-practice within Arizona do not apply to reduce the duration of probation under this  
3 Order. Respondent shall notify the Board in writing within five days of the dates of departure  
4 and return or the dates of non-practice in Arizona.

5 14. Modification or Termination: Respondent shall not request modification or  
6 termination of this Order for a period of 2 years from the date of this Order and any such request  
7 must include the approval of the practice monitor.

8 15. Strict Enforcement: The Board shall strictly enforce the terms of this Order. Any  
9 violation of the Order by Respondent shall be grounds for disciplinary action, including  
10 summary suspension, pending hearing for revocation or other action. Respondent bears  
11 responsibility for the timely delivery to the Board's office of all reports, information, and  
12 documents required to be submitted under this Order. Lack of timely receipt at the Board's  
13 office constitutes a violation of this Order.

14 16. Respondent acknowledges that he has the right to retain counsel, and he has done  
15 so. Further, Respondent acknowledges that, by this settlement, he waives all present and future  
16 rights to administrative or court appeal of this matter, including the right to hearing, rehearing, or  
17 judicial review.

18 DATED this 14<sup>th</sup> day of June, 2005.

19 ARIZONA BOARD OF  
20 PSYCHOLOGIST EXAMINERS

21 By: Maxine McCarthy  
22 Maxine McCarthy  
23 Executive Director

24 ORIGINAL of the foregoing filed  
25 this 14 day of June, 2005, with:

26 Office of Administration Hearings  
1400 W. Washington, Suite 101  
Phoenix, Arizona 85007

1 COPY of the foregoing filed this  
14<sup>th</sup> day of June, 2005, with:

2 The Arizona State Board of Psychologist Examiners  
3 1400 West Washington, Suite 235  
4 Phoenix, Arizona 85007

5 COPY of the foregoing mailed this  
14<sup>th</sup> day of June, 2005, to:

6 Charles Buri, Esq.  
7 Friedl Richter & Buri, P.A.  
8 6909 E. Greenway Pkwy, Suite 200  
9 Scottsdale, Arizona 85254-2131  
10 Attorney for Dr. Powers

11 Frank Powers, Ph.D.  
12 Address of Record  
13 Respondent

14 COPY of the forgoing mailed this  
14<sup>th</sup> day of June, 2005, with:

15 Elizabeth A. Campbell, Esq.  
16 Office of the Attorney General  
17 1275 West Washington, CIV/LES  
18 Phoenix, Arizona 85007

19 By: Sharon S Courtney

20 446319

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