BEFORE THE BOARD OF PSYCHOLOGIST EXAMINERS
FOR THE STATE OF ARIZONA

IN THE MATTER OF: **AUSTIN ASHLEY MCCALL, Psy.D.** Holder of License No. 5199 for the Practice of Psychology in the State of Arizona, Respondent.	Case No: 20-47 **FIRST AMENDED CONSENT AND AGREEMENT AND ORDER FOR PROBATION AND MONITORING**

This matter came before the Arizona State Board of Psychologist Examiners ("Board") at the Board's virtual meeting on October 16, 2020, at which time the Board convened and considered whether Austin Ashley McCall's ("Respondent") was in violation of the September 23, 2020, Consent Agreement and Order for Probation and Monitoring ("Consent Agreement"). Respondent was properly noticed and appeared virtually with legal counsel, Ms. Tammy Thibodeau.

RECITALS

1. Respondent has read and understands this Amended Consent Agreement and has had the opportunity to discuss this Amended Consent Agreement with an attorney.

2. Respondent understands that she has a right to a public administrative hearing concerning this matter at which hearing she could present evidence and cross examine witnesses. Respondent irrevocably waiver her right to such hearing and the rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action, concerning the matters set forth herein.

3. Respondent does not relinquish her right to an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action, concerning violations and final resolution of this

Order. The scope of such hearing will be limited to whether this Order or Amended Consent has been violated or final resolution of this matter.

4. Respondent understands that this Amended Consent Agreement or any part of the agreement may be considered in any future disciplinary action by the Board against her.

5. Respondent understands this Amended Consent Agreement deals with Board complaint number 20-47 involving allegations of unprofessional conduct against Respondent. The investigation into these allegations against Respondent shall be concluded upon the Board's adoption of this Amended Consent Agreement, however, the Board reserves the right to investigate any alleged violation of the Amended Consent Agreement.

6. Respondent acknowledges and agrees that the acceptance of this Amended Consent Agreement is solely to settle this Board matter and does not preclude the Board from instituting other proceedings as may be appropriate now or in the future, or institute proceedings for non-compliance with the Amended Consent Agreement and Order.

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

8. Furthermore, and notwithstanding any language in this Amended Consent Agreement, this Amended Consent Agreement does not preclude in any way any other state agency or officer or political subdivision of this state from instituting proceedings, investigating claims, or taking legal action as may be appropriate now or in the future relating to this matter or other matters concerning Respondent, including violations of the Arizona Consumer Fraud Act. Respondent acknowledges that, other than with respect to

the Board, this Amended Consent Agreement makes no representations, implied or otherwise, about the views or intended actions of any other state agency or officer or political subdivision of the state relating to this matter or other matters concerning Respondent.

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

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

11. Respondent understands that this Amended Consent Agreement is a public record that will be publicly disseminated as a formal action of the Board and may be reported as required by law to the National Practitioner Data Bank.

12. Respondent understands that any violation of this Amended Consent Agreement constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §32-2061(16)(aa).

13. Respondent agrees that the Board will adopt the following Findings of Fact, Conclusions of Law and Order.

ACCEPTED AND AGREED BY RESPONDENT

Austin McCall, PsyD

Austin Ashley McCall, PsyD
Psychologist

11/24/2020
Date

AMENDED FINDINGS OF FACT

1. The Findings of Fact as set forth in the September 23, 2020, are incorporated herein by reference and are part of this Amended Consent Agreement.

2. On September 23, 2020, the Board and the Respondent entered into a Consent Agreement and Order for Probation and Monitoring. Pursuant to that Consent Agreement, Respondent's license to practice psychology was placed on probation for minimum period of five (5) years during which time she was to undergo individual weekly counseling sessions, attend monthly psychiatric visits, undergo random urine drug screens at least twice monthly, attend weekly Caduceus or other 12 step meetings, and engage a Practice Monitor to assist in evaluating all aspects of the Respondent's practice.

3. Paragraph 3(c)(v) of the Order provides that "A positive drug screen result for alcohol, any illegal substance including marijuana or a substance for which Respondent does not have a current and valid prescription is a violation of this Order and may result in the summary suspension, suspension or revocation of Respondent's license."

4. On or about October 7/8, 2020, Board received a copy of the results of Respondent's September 21 and 29, 2020, urine drug screens. Both tests were positive for Normeperidine, which is a metabolite of Meperidine (Demerol). Normeperidine alone is not available by prescription. According to the lab report, the presence of Normeperidine indicates Meperidine/Demerol use, however, Respondent does not have a valid prescription for Demerol. Information contained in the Board's files indicates that the September 29, 2020 lab results/specimen underwent confirmation testing under the same method of confirmatory testing as the original specimen was confirmed, -and the sample was again positive for Normeperidine. The September 2, 2020 lab results/specimen were not available to undergo confirmatory testing, Respondent disagrees with the lab results and confirmatory testing for both specimens.2

5. Respondent asserts that the urine drug screens were "false positives" or the result of her taking Robitussin DM. Information provided to the Board and Respondent is that Robitussin DM would not result in a positive drug screen for Normeperidine.

6. According to information provided to the Board, just after being notified of the positive lab results, Respondent met with her psychiatrist, Dr. Monica Faria, M.D., and Practice Monitor, Mark Rohde, Ph.D., but failed to discuss with any of them the positive drug results. Dr. Faria opined that it is Respondent's responsibility to inform her therapeutic team what medications she is taking or has been prescribed.

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1 September 2, 2020 specimen was evaluated 157-hours after collection.
2 On October 16, 2020, no information was presented to verify chain-of-custody of either specimen.

prescription for Demerol. Information contained in the Board's files indicates that the September 29, 2020 lab results/specimen underwent confirmation testing under the same method of confirmatory testing as the original specimen was confirmed, and the sample was again positive for Normeperidine. The September 2, 2020 lab results/specimen were not available to undergo confirmatory testing, Respondent disagrees with the lab results and confirmatory testing for both specimens.[2]

5. Respondent asserts that the urine drug screens were "false positives" or the result of her taking Robitussin DM. Information provided to the Board and Respondent is that Robitussin DM would not result in a positive drug screen for Normeperidine.

6. According to information provided to the Board, just after being notified of the positive lab results, Respondent met with her psychiatrist, Dr. Monica Faria, M.D., and Practice Monitor, Mark Rohde, Ph.D., but failed to discuss with any of them the positive drug results. Dr. Faria opined that it is Respondent's responsibility to inform her therapeutic team what medications she is taking or has been prescribed.

7. On October 9, 2020, Respondent met with her psychiatrist, Dr. Faria, to discuss the positive urine drugs screens and to undergo a Hair 17 Drug Panel Test. The specifics of Dr. Faria's evaluation are contained in the Board's files.

8. On October 15, 2020, the results of the Hair 17 Drug Panel Test results were received and were positive for Oxycodone but negative for Normeperidine/Demerol. According to Dr. Faria, the last Oxycodone prescription written for Respondent was in April of 2020. Dr. Faria opined that if an individual is in recovery and a controlled substance must be prescribed, it should be prescribed and taken for a specific period of time and not on an as-needed basis. Dr. Faria also noted that she was very aware of and concerned that the Nurse Practitioner who prescribed the Oxycodone to Respondent was a close friend of Respondent's and that she was very sensitive to that relationship. Dr.

[2] On October 16, 2020, no information was presented to verify chain-of-custody of either specimen.

Faria further opined that a controlled substance should not be prescribed outside of the therapeutic relationship but if necessary, must be known to all members of the recovery team. The Board was aware of Respondent's prescription of Oxycodone (written in March of 2020) on August 14, 2020, when the Board met to discuss the original Consent Agreement. The Board was also made aware of Respondent's prescription was taken "as needed" for pain.

9. The Board expressed overall concern with the lack of communication between Respondent and her treatment team and among the treatment team members. Dr. Faria commented to the Board that she would obtain all of the releases necessary to ensure effective and efficient communication among all treatment team members.

AMENDED CONCLUSIONS OF LAW

The Board has personal and subject matter jurisdiction in this case under A.R.S. § 32-2061 *et seq.*, and is authorized to summarily suspend any license based on emergent conditions and circumstances under A.R.S. § 32-2081(I).

The conduct and circumstances alleged in the Findings of Fact and Amended Findings of Fact constitute a violation of A.R.S. § 32-2061(16)(l), practicing psychology while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of the client or patient or renders the psychological services ineffective.

The conduct and circumstances alleged in the Findings of Fact and Amended Findings of Fact constitute a violation of A.R.S. § 32-2061(16)(aa), which is violating a formal board order, consent agreement, term of probation or stipulated agreement.

AMENDED ORDER

Based on the Amended Findings of Fact and the Amended Conclusions of Law as set forth above, the Board issues the following Amended Order. The effective date of this Amended Consent Agreement and Order is the date that it is signed by the Board's Executive Director or her designee. All provisions contained in the September 23, 2020,

Consent Agreement and Order remain in full force and effect to the extent they are not inconsistent with the following terms:

1. **NOW IT IS THEREFORE ORDERED** that Mark Rohde, Ph.D., who acts as Respondent's Practice Monitor, shall upon the effective date of this Amended Consent Agreement and Order expand his role as Practice Monitor to include assuming shared over-sight responsibility of Respondent's treatment and rehabilitation with Monica Faria, M.D. Respondent shall comply with all aspects of Dr. Rohde's monitoring including but not limited to submission of meeting logs to document her attendance at group meetings and individual therapy at Rising Phoenix, and meeting logs to document Respondent's participation in Caduceus, NA/AA or other 12-step program as outlined in the Consent Agreement. Dr. Rohde is also to receive results of all drug screening tests ordered by Dr. Faria or the Board. Dr. Rohde's responsibility to provide quarterly reports to the Board continues as do other responsibilities set forth in the original Consent Agreement and Order that are not inconsistent with the Amended Consent Agreement and Order. <u>The relationship between Respondent and Dr. Rodhe is a direct relationship. Respondent shall not use an attorney or other intermediary to communicate with Dr. Rhode concerning participation and compliance issues. Any such questions should be directed to Board staff.</u>

2. **IT IS FURTHER ORDERED** that Dr. Monia Faria shall assume shared over-sight responsibility of Respondent's treatment and rehabilitation with Dr. Mark Rohde. Dr. Faria shall assume responsibility for over-seeing Dr. McCall's randomized drug screenings, including having the authorization to order additional testing or a different variety or method of testing, including observed testing. In addition, Dr. Faria shall over-see and manage all medical-related issues relating to Respondent's recovery, including whether Respondent shall be prescribed a controlled substance. Dr. Faria's responsibility to provide quarterly reports to the Board continues as do other

responsibilities set forth in the original Consent Agreement and Order that are not inconsistent with the Amended Consent Agreement and Order. Finally, Dr. Faria shall determine which, if any, quarterly reports, evaluations or test results are provided to Respondent. The relationship between Respondent and Dr. Faria is a direct relationship. Respondent shall not use an attorney or other intermediary to communicate with Dr. Faria concerning participation and compliance issues. Any such questions should be directed to Board staff.

3. **IT IS FURTHER ORDRED** that Respondent shall be screened randomly for illegal or illicit drugs, and alcohol, at least 4 times per month using a testing method(s) as required by Dr. Faria. **All random drug screen results shall be sent directly to Dr. Faria, who shall disseminate the reports as she deems necessary. All positive results and/or missed tests shall be reported to the Board staff and Respondent's attorney immediately (within 24 hours of the missed test or receipt of the positive drug screen results).** After four (4) months, Dr. Faria shall reassess whether the frequency of the testing may be altered and so inform the Board. Should Respondent anticipate being out of town anytime during probation, she shall notify Dr. Faria in advance of her being out of town and make arrangements to be tested while away from the Phoenix area. The testing arrangements shall be pre-approved by Dr. Faria. The Board shall consider any positive test result[3] or any specimen that has been tampered with, a violation of this Amended Consent Agreement and Order and thus, Respondent shall be subject to disciplinary action including, but not limited to, suspension or revocation of her license. Dr. Faria shall report any dilute specimen result to Board staff and Respondent's attorney within 24 hour of receiving the results. Dilute specimen results may lead to additional testing, utilization of different testing modalities, and/or

[3] A positive test result is a drug screen specimen that tests positive for any drug, illegal substance, alcohol, or controlled substance or prescription medication for which Respondent does not a current and valid prescription that has been reviewed by Dr. Faria.

imposition of additional disciplinary action by the Board after notice and an opportunity to be heard.

4. **IT IS FURTHER ORDERED** that beginning with the effective date of this Amended Consent Agreement and Order, in addition to acting as Respondent's psychiatrist, Dr. Faria shall oversee and monitor all of Respondent's medications, both prescription and over-the-counter. **Any physician, primary care provider or specialist (i.e. obstetrician-gynecologist) providing care to Respondent shall, prior to writing any prescriptions for Respondent for a controlled substance, communicate and coordinate with Dr. Faria. Only in emergent situations, such as an illness or injury necessitating a visit to an Emergency Room or Urgent Care, may a prescription for a controlled substance be written for Respondent without first contacting Dr. Faria. If Respondent receives an emergency prescription, she shall notify Dr. Faria within 24 hours of filling the prescription.** All over-the-counter medications shall be discussed with Dr. Faria prior to taking them or Dr. Faria and Respondent may agree in advance of what over-the-counter medications are appropriate.

5. **IT IS FURTHER ORDERED that Respondent shall continue to attend weekly facilitator-led support groups at Rising Phoenix unless otherwise determined by Dr. Faria that Respondent shall attend a facilitator-led support group for professionals, such as Caduceus. Should Dr. Faria refer Respondent to a facilitator-led professional support group, Dr. Faria shall notify Board staff in wring within 48 hours of the referral. Dr. Faria shall ensure that the monitoring contract between herself and Respondent is amended to reflect the referral. The facilitator of that group shall provide quarterly reports to the Board. The first quarterly report is due within ten days of the end of the quarter, beginning on the effective date of this Amended Consent Agreement and Order.**

DATED this_____day of _____, 2020.

ARIZONA STATE BOARD OF
PSYCHOLOGIST EXAMINERS

Heidi Herbst Paakkonen
Executive Director

ORIGINAL filed
this 25th day of November, 2020 to:

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

COPY of the foregoing mailed by Certified Mail No. 7009 2250 0001 1489 9111
this 25th day of November, 2020 to:

Austin Ashley McCall, Psy.D.
Address on file
Respondent

COPY of the foregoing mailed by regular U.S. Mail
this 25th day of November, 2020 to:

Ms. Tammy Thibodeau, Esq.
Lancaster Law
One West Elliot Road, Suite 14
Tempe, AZ 85284
Attorney for Respondent

COPY of the foregoing mailed via email (jeanne.galvin@azag.gov)
this 25th day of November, 2020 to:

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

By: _____
JMG/9119953