

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

3 In the Matter of:

Case No: 21-01

4 Brian Schaffer, M.S., BCBA.

**FIRST AMENDED CONSENT
AGREEMENT AND ORDER FOR
PROBATION AND PRACTICE
MONITOR**

5 Holder of License No. BEH-00440
6 for the Practice of Behavior Analysis
7 in the State of Arizona

8 On October 1, 2021, the Arizona Board of Psychologist Examiners (“Board”) met in
9 open session for the purpose of reviewing Brian Schaffer’s (“Respondent”) written notification
10 regarding his intent to return to practice in Arizona, as required by the November 6, 2020,
11 Consent Agreement, Findings of Fact, Conclusions of Law and Order for Decree of Censure
12 (“Consent Agreement”). Respondent appeared virtually and addressed the Board. After
13 consideration of the matter, the Board voted to offer Respondent this Amended Consent
14 Agreement and Order (“Amended Consent Agreement”) to enable him to return to practice in
15 Arizona.

16 **JURISDICTION**

17 1. The Board is authorized to regulate the practice of behavior analysis in Arizona
18 pursuant to A.R.S. § 32-2091, *et seq.*, and the rules promulgated thereunder, found in Arizona
19 Administrative Code ("A.A.C." or "rules") at R4-26-401, *et seq.*, to regulate and control the
20 licensing of behavior analysts in the State of Arizona.

21 2. Respondent is the holder of license number BEH-00440 for the practice of
22 behavior analysis in the State of Arizona.

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

25 **RECITALS**

26 1. Respondent has read and understands this Amended Consent Agreement and has

1 had the opportunity to discuss this Amended Consent Agreement with an attorney.

2 2. Respondent understands that he has a right to a public administrative hearing
3 concerning this matter at which hearing he could present evidence and cross examine witnesses.
4 By entering into this Amended Consent Agreement, Respondent knowingly and voluntarily
5 relinquishes all right to such an administrative hearing, as well as rights of rehearing, review,
6 reconsideration, appeal, judicial review or any other administrative and/or judicial action,
7 concerning the matters set forth herein.

8 3. Respondent affirmatively agrees that this Amended Consent Agreement shall be
9 irrevocable.

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

12 5. Respondent understands this Amended Consent Agreement deals with Board
13 complaint number 21-01 involving allegations of unprofessional conduct against Respondent.

14 6. Respondent acknowledges and agrees that the acceptance of this Amended
15 Consent Agreement is solely to settle this Board matter and does not preclude the Board from
16 instituting other proceedings as may be appropriate now or in the future.

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

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

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

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

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

14 11. Respondent understands that this Amended Consent Agreement is a public
15 record that will be publicly disseminated as a formal action of the Board and shall be reported to
16 the Behavior Analyst Certification Board (“BACB”) and the National Practitioner Databank, as
17 required by law.

18 12. Respondent understands that any violation of this Amended Consent Agreement
19 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §32-
20 2091(12)(aa).

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

23 ACCEPTED AND AGREED BY RESPONDENT

24 

25 _____
26 Brian Schaffer, M.S., BCBA
Behavior Analyst

10/20/2021

Date

1 **AMENDED FINDINGS OF FACT**

2 1. The Findings of Fact as set forth in the November 6, 2020 Consent Agreement,
3 are incorporated herein by reference and are part of this Amended Consent Agreement.

4 2. The Board and Respondent entered into the November 6, 2020, Consent
5 Agreement to address the findings of unprofessional conduct. The Board had expressed its intent
6 to impose a period of probation that included practice monitoring and continuing education.
7 However, during the negotiation of the Consent Agreement, Respondent's attorney notified
8 Board staff that Respondent was moving out-of-state for a job opportunity and did not intend to
9 practice behavior analysis in Arizona. Based upon this representation, the Board and Respondent
10 entered into the Consent Agreement pursuant to which Respondent was issued a decree of
11 censure. Additionally, the Consent Agreement required Respondent to notify the Board if he
12 returned to Arizona with the intent to practice behavior analysis as he would be subject to
13 practice monitoring/supervision.

14 3. On or about August 31, 2021, Respondent contacted Board staff regarding his
15 intent to return to Arizona and practice under his Behavior Analyst license. On October 1, 2021,
16 at a public meeting, the Board considered Respondent's notification of his desire to return to
17 practice.

18 4. After deliberation, the Board offered Respondent this Amended Consent
19 Agreement, which requires probation, practice monitoring and continuing education.

20 **AMENDED CONCLUSIONS OF LAW**

21 1. The Conclusions of Law from the November 6, 2020, Consent Agreement are
22 incorporated herein by reference and are as follows:

23 The conduct and circumstances described above constitute unprofessional conduct
24 pursuant to:

- 25 a. A.R.S. § 32-2091(12)(h), failing or refusing to maintain and retain adequate
26 business, financial or professional records pertaining to the behavior analysis

1 services provided to a client;

2 b. A.R.S. § 32-2091(12)(o), engaging in activities as a behavior analyst that are
3 unprofessional by current standards of practice;

4 c. A.R.S. § 32-2091(12)(dd), violating an ethical standard adopted by the Board
5 as it pertains to sections 4.01, 4.05, and 4.06 of the BACB's Professional and
6 Ethical Compliance Code for Behavior Analysts.

7 **AMENDED ORDER**

8 Based on the Amended Findings of Fact and Amended Conclusions of Law as set forth
9 above, the parties agree to the provisions and penalties imposed set forth below. All provisions
10 contained in the November 6, 2020, Consent Agreement remain in full force and effect to the
11 extent they are not inconsistent with the following terms, IT IS ORDERED THAT:

12 1. **PROBATION:** Respondent's license as a behavior analyst is placed on probation
13 for a minimum period of twelve (12) months from the effective date of this Amended Consent
14 Agreement, unless otherwise ordered by the Board. The effective date of this Amended Consent
15 Agreement is the date that it is signed by the Board's Executive Director, or her designee, on
16 behalf of the Board.

17 2. **CONTINUING EDUCATION:** Within six (6) months of the effective date of this
18 Amended Consent Agreement and, in addition to the continuing education requirements that are
19 required by rule for license renewal, Respondent shall complete an additional fifteen (15) hours
20 of continuing education in the areas of assessment and treatment, clinical documentation,
21 treatment planning, ethics, preference assessments and professionalism. All continuing education
22 courses must be **pre-approved** by the Board's Vice Chair or designee. Within fourteen (14) days
23 of completing this continuing education, Respondent shall submit the certificates of completion
24 to the Executive Director or designee. The Board recognized that Respondent completed the
25 following continuing education as required by the BACB in August of 2021:
26

- a. Crafting a Well-Written Behavior Plan – 3.0 hours
- b. Current Issues with Visual Analysis of Data: How Errors in Graph Construction Can Lead to Errors in Decision Making – 1.0 hour
- c. Escape Extinction: Ethics and Alternatives – 4.0 hours
- d. Preference and Reinforcer Assessments – 2.0 hours
- e. Studying the New 2022 Ethics Code for Behavior Analysts – 1.0 hour
- f. Trial-Based Functional Analysis – 4.0 hours

The continuing education that Respondent completed for the BACB requirement satisfies the fifteen hour requirement stipulated by the Board and no further continuing education is required to satisfy the terms of this Amended Agreement.

3. **PRACTICE MONITOR:** While on probation, Respondent shall work with a Practice Monitor, an actively licensed behavior analyst in Arizona, who is **pre-approved** by the Board’s Vice-Chair or designee and who shall provide professional guidance and input to Respondent with respect to assessment and treatment, clinical documentation/recordkeeping, treatment planning, preference assessments, treatment modalities, ethics, compliance with Board statutes/rules, importance of professional consultation, professionalism and any other topic deemed pertinent by the Practice Monitor and to ensure that Respondent meets all requirements for the standard of practice required of a behavior analyst and to address the violations set forth in the November 6, 2020 Consent Agreement.

Respondent shall submit the name of the licensed behavior analyst who shall serve as the Practice Monitor to the Board’s Executive Director for approval within ten (10) business days of the effective date of this Amended Consent Agreement. Within twenty (20) business days of the effective date of this Amended Consent Agreement, Respondent shall enter into the Practice Monitor agreement. The Practice Monitor shall have no familial, personal or business relationship with Respondent prior to agreeing to act as the Practice Monitor. Respondent shall present this

1 Amended Consent Agreement and the November 6, 2020 Consent Agreement to the Board-
2 approved Practice Monitor before the first meeting. The first meeting between Respondent and
3 the Practice Monitor shall occur within 30 days of the effective date of this Amended Consent
4 Agreement. The Practice Monitor shall submit to the Executive Director a detailed monitoring
5 program outlining the monitoring goals and objectives and how achievement of them will be
6 measured, and the activities Respondent will be required to complete. The written monitoring
7 program shall be provided to the Executive Director within ten (10) business days of contracting
8 with Respondent to serve as Practice Monitor. The Practice Monitor shall review all applicable
9 Committee and Board meeting audio and/or minutes for Complaint no. 21-01, which will be
10 provided by Board staff, in advance of submitting the written monitoring plan.
11

12 **Respondent shall meet with the Practice Monitor in-person, or virtually/remotely if**
13 **determined to be appropriate by the Practice Monitor, at least twice per month for a**
14 **minimum of two hours each session during the probationary period.** The Practice Monitor
15 shall review a minimum of five of Respondent's recent patient records each quarter and discuss
16 with Respondent the Monitor's findings, conclusions, and recommendations for improvement. If
17 patient files are not available for some reason, the Practice Monitor and Respondent shall engage
18 in other activities to address the stated deficiencies. The alternative activities may include but are
19 not limited to: reading/analyzing journal articles; conducting mock case formulations where
20 Respondent reviews information presented by the Practice Monitor and subsequently reviews
21 session protocol or plans for treatment, identifies any potential areas in need of modification prior
22 to session based on information, reviews data collection, reviews the crisis plan, and creates an
23 action plan following the session given mock information; and any other activity deemed
24 pertinent by the Practice Monitor.
25

26 The Practice Monitor shall submit to the Board detailed quarterly written reports of the

1 meetings with Respondent, to include topics covered, areas of progress, matters of remaining
2 concern, any modifications made to Respondent's practice, and any other pertinent information.
3 The quarterly reports shall include the dates the Practice Monitor met with Respondent. The
4 Practice Monitor shall provide written reports to the Board within 30 days after the end of each
5 quarter. The first quarter shall begin on the date of the first session between the Respondent and
6 the Practice Monitor. Before the conclusion of the probationary period, the Practice Monitor is to
7 complete a final written report to the Board summarizing their interaction with Respondent,
8 topics discussed, areas of progress, matters of remaining concern, overall impressions, and if they
9 recommend monitoring be continued or stopped. The final report shall be submitted to the Board
10 within 30 days prior to the date of the meeting at which the Board considers Respondent's written
11 request to terminate probation as set forth in paragraph 4 below.
12

13 If, during the probationary period, the Practice Monitor is unable or unwilling to continue
14 to act as Respondent's Practice Monitor, within 10 business days of the Practice Monitor's
15 termination of the practice monitor relationship, Respondent shall contact the Executive Director
16 in writing and present another potential Practice Monitor for approval. Respondent shall notify
17 the Board of his new Practice Monitor within 20 business days of receiving approval. The
18 sessions between Respondent and any Practice Monitor that occurred prior to the effective date
19 of this Amended Consent Agreement shall not count toward those sessions required under this
20 Amended Consent Agreement.
21

22 4. **TERMINATION OF PROBATION:** At the end of six (6) months and upon the
23 Practice Monitor's recommendation, Respondent may petition the Board, in writing, and request
24 termination from probation. If the Board determines that Respondent has not complied with the
25 requirements of this Amended Consent Agreement, the Board may either (a) continue the
26 probation, or (b) institute proceedings for noncompliance with this Amended Consent Agreement,

1 which may result in the suspension, revocation, or other disciplinary or remedial action.

2 5. **EFFECTIVE DATE:** Respondent understands that this Amended Consent
3 Agreement shall not become effective unless and until adopted by the Board and executed on
4 behalf of the Board. Any modification to this original document is ineffective and void unless
5 mutually approved by the parties in writing.

6 6. **CONSIDERATION IN FUTURE ACTIONS:** Respondent understands that this
7 Amended Consent Agreement, or any part thereof, may be considered in any future disciplinary
8 action against him.

9 7. **FINAL RESOLUTION:** This Amended Consent Agreement constitutes a final
10 resolution of these disciplinary matters but does not constitute a dismissal or resolution of other
11 matters currently pending before the Board, if any, and does not constitute any waiver, expressed
12 or implied, of the Board's statutory authority or jurisdiction regarding any other pending or future
13 investigations, actions, or proceedings. Further, this Amended Consent Agreement does not
14 preclude any other agency, subdivision, or officer of this State from instituting other civil or
15 criminal proceedings with respect to the conduct that is the subject of this Amended Consent
16 Agreement.
17

18 8. **TIME:** Time is of the essence with regard to this Amended Consent Agreement.

19 9. **COSTS:** Respondent shall be responsible for all costs incurred as a result of his
20 compliance with this Amended Consent Agreement.
21

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

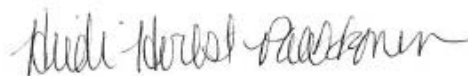
1 11. **NON-RENEWAL OR LATE RENEWAL:** If Respondent fails to renew his license
2 while under the terms of this Amended Consent Agreement and subsequently applies for late
3 renewal of license or a new license, the remaining terms of this Amended Consent Agreement
4 shall be imposed if the late renewal or reapplication for license is granted.

5 12. **TOLLING:** If Respondent leaves Arizona to reside or practice behavior analysis
6 outside of Arizona, the periods of temporary or permanent residency or practice outside Arizona
7 do not reduce the duration of the terms under this Amended Consent Agreement. Respondent
8 shall notify the Board in writing within five (5) business days of the dates of departure and within
9 ten (10) of his planned return to the State. If Respondent returns to the practice of behavior
10 analysis in the State of Arizona he shall be required to comply with the terms of this Amended
11 Consent Agreement.
12

13 13. **PUBLIC RECORD:** This Amended Consent Agreement is a public record that may
14 be publicly disseminated as a formal action of the Board and reported to the National Practitioner
15 Data Bank and the BACB.

16 DATED this 22 day of October, 2021.
17

18 ARIZONA STATE BOARD OF
19 PSYCHOLOGIST EXAMINERS

20 

21 _____
22 Heidi Herbst Paakkonen
23 Executive Director

24 **ORIGINAL** filed electronically
25 this 22 day of October, 2021 to:

26 The Arizona State Board of Psychologist Examiners
1740 W. Adams Street, Suite 3403
Phoenix, Arizona 85007

1 **COPY** of the foregoing mailed by regular and certified mail# 9489009000276155201725
2 this 22 day of October, 2021 to:

3 Brian Schaffer, M.S., BCBA
4 Address on file
5 Respondent

6 **COPY** of the foregoing mailed via email (jeanne.galvin@azag.gov)
7 this 22 day of October, 2021 to:

8 Jeanne M. Galvin
9 Assistant Attorney General
10 2005 North Central Ave. SGD/LES
11 Phoenix, Arizona 85004
12 Jeanne.galvin@azag.gov
13 Attorney for the State of Arizona

14 By: Jennifer Michaelson
15
16
17
18
19
20
21
22
23
24
25
26