

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

3
4 In the Matter of)
5 Brian Schaffer, M.S., BCBA.)
6 Holder of License No. BEH-00440)
7 for the Practice of Behavior Analysis)
8 in the State of Arizona)

Case No. 21-01
CONSENT AGREEMENT,
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER FOR DECREE OF
CENSURE

9 On October 2, 2020, the Arizona Board of Psychologist Examiners ("Board") met in
10 open session to discuss the above-referenced case for an initial review. Brian Schaffer, M.S.,
11 BCBA, ("Respondent") appeared virtually with his legal counsel, Flynn Carey. In lieu of
12 further administrative proceedings, the parties enter into this Consent Agreement, Findings of
13 Fact, Conclusions of Law, and Order for a Decree of Censure ("Consent Agreement").

14 **JURISDICTION**

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

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

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

23 **RECITALS**

24 1. Respondent has consulted his attorney prior to enter into this Consent
25 Agreement. He has read and understands this Consent Agreement and makes this agreement
26 freely and voluntarily.

27 2. Respondent irrevocably waives his right to an informal interview, a hearing,
28 rehearing, or judicial review.

1 3. The Board and Respondent enter into this Consent Agreement in order to
2 promptly and judiciously resolve this matter, consistent with the public interest and the
3 statutory requirements of the Board.

4 4. The Board adopts the Findings of Fact, Conclusions of Law and Order set forth
5 below.

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8 the event that the Board does not approve this Consent Agreement, it is withdrawn and shall be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

13 6. Respondent understands that once the Board approves and signs this Consent
14 Agreement, it is a public record that may be publicly disseminated as a formal disciplinary
15 action of the Board, and that it shall be reported to the Behavior Analyst Certification Board
16 ("BACB") and the National Practitioner Databank, as required by law.

17 FINDINGS OF FACT

18 1. Respondent is a licensed behavior analyst in the State of Arizona, license
19 number BEH-00440. He has been licensed in Arizona since March 12, 2019.

20 2. On July 16, 2020, the Board received Complaint No. 21-01 that alleged acts of
21 unprofessional conduct by Respondent.

22 3. The allegations in Complaint No. 21-01 address Respondent's evaluation and
23 treatment of a 4-year-old male child with Autism Spectrum Disorder ("Client"), whom he
24 began treating in April 2020 at BlueSprig Pediatrics ("Agency"). The Complaint included
25 video footage of some of Respondent's interaction with Client but that footage did not contain
26 audio. The Board noted that the video did not conclusively show harm to the Client; the Board
27 also noted that the lack of audio in the footage, the limited amount of footage, and the
28 Agency's failure to preserve any other related video prevented the Board from concluding that
the physical conduct rose to the level of misconduct. The Board noted context was missing
from the video evidence, and that it was subjective and difficult to interpret.

1 4. During one session on June 30, 2020, as Respondent and Client were
2 “roughhousing”, Respondent played roughly with a beanbag chair with Client. Respondent
3 ceased play when Client began to vocalize.

4 5. During a session that occurred on July 1, 2020, there was additional “rough-
5 housing” between Respondent and Client. Some of these events included Respondent picking
6 up Client, flipping him over and putting him on the bean bag.

7 6. Respondent asserts he used positive reinforcement in the form of play, and
8 Client’s love of superheroes to develop games that would help promote Client’s treatment
9 goals. The games were often physical and “roughhousing” was part of the reinforcement. When
10 Client engaged in maladaptive behavior, Respondent asked him if he was being a “baby” or a
11 “big kid”. Respondent asserts that his using the terms “baby” and “big kid” were used to
12 categorize behaviors for purposes of modifying the Client’s behaviors to position him for a
13 successful transition to Kindergarten. Another time Respondent threatened to delete Client’s
14 favorite apps from the iPad if he did not listen. Respondent indicated that the threat to delete
15 apps was false, and was part of their game in which he played a villain who would delete the
16 superhero’s games. Respondent stated that he never had any intention of hurting Client.

17 7. During the initial case review on October 2, 2020, the Board found that
18 Respondent’s recordkeeping and documentation for Client was lacking. There was no
19 documentation in the file sufficient to indicate that “roughhousing” was Client’s preferred
20 activity nor was there any data in the records to demonstrate the practice was justified and
21 effective. Respondent failed to document that he conducted a Behavioral Improvement Plan
22 during the time he treated Client.

23 8. The Board also found that there was no written treatment plan for Client that
24 sets forth Client’s needs and justifies the therapy used. Instead, the treatment plan in the file
25 was based upon work from a previous Behavioral Analyst, and didn’t reflect some of the
26 therapies utilized by Respondent. Respondent indicated that he planned to prepare a
27 new/revised treatment plan upon seeking re-authorization of services from Client’s insurance
28 provider.

 9. Respondent’s clinical documentation for Client’s care did not meet the standards
of care as outlined in the BACB’s Professional and Ethical Compliance Code for Behavior

1 Analysts as it relates to treatment planning, assessment, informed consent, and maintaining
2 records.

3 10. After conclusion of the initial case review on October 2, 2020, the Board moved
4 to forward the case to an Informal Interview at a later date.

5 11. Based on Respondent's indication following the initial case review that he is
6 moving out-of-state for a job opportunity and no longer intends to practice behavior analysis in
7 Arizona, the Board and Respondent enter into this Consent Agreement in lieu of further
8 administrative proceedings. Should Respondent return to Arizona under his current license or
9 apply for licensure in the future, he may be subject to supervision or monitoring, as determined
10 by the Board at a later date.

11 CONCLUSIONS OF LAW

12 1. The conduct and circumstances described above constitute unprofessional
13 conduct pursuant to:

- 14 a. A.R.S. § 32-2091(12)(h), failing or refusing to maintain and retain
15 adequate business, financial or professional records pertaining to the
16 behavior analysis services provided to a client;
17
18 b. A.R.S. §32-2091(12)(dd), violating an ethical standard adopted by the
19 Boards as it pertains to sections 4.01, 4.05., and 4.06 of the BACB's
20 Professional and Ethical Compliance Code for Behavior Analysts.

21 ORDER FOR DECREE OF CENSURE

22 Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY
23 ORDERED THAT:

24 1. Respondent is issued a **Decree of Censure** (disciplinary). This Decree is
25 conclusive evidence of the matters described herein and may be considered by the Board in
26 determining appropriate sanctions in the event a subsequent violation occurs.

27 2. If Respondent returns to Arizona and practices under his behavior analyst
28 license while the license is active, he is required to notify the Board in writing that he is
returning to practice. Respondent shall notify the Board prior to providing behavior analytic
services in Arizona. Should Respondent return to Arizona under his current license or apply for

1 licensure in the future, he may be subject to supervision or monitoring, as determined by the
2 Board.

3 DATED THIS 3rd day of November, 2020.
4 **6th**

5 

6
7 Brian Schaffer, M.S., BCBA
8 Respondent

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7 Heidi Herbst Paakkonen
8 Executive Director

9
10 **ORIGINAL** of the foregoing filed
11 this 6 day of November, 2020, with:

12 The Arizona State Board of Psychologist Examiners
13 1740 W. Adams St., Suite 3403
14 Phoenix, Arizona 85007

15 **COPY** mailed by regular and certified mail # **9489009000276155081488**
16 this 6 day of November, 2020, to:

17 Brian Schaffer, M.S., BCBA
18 Address on Record
19 Respondent

20 **COPY** mailed by regular mail
21 this 6 day of November 2020, to:

22 Flynn Carey, Esq.
23 MITCHELL | STEIN | CAREY | CHAPMAN, PC
24 One Renaissance Square
25 2 North Central Avenue, Suite 1450
26 Phoenix, AZ 85004
27 Attorney for Respondent

28 **COPY** of the foregoing via email (jeanne.galvin@azag.gov)
This 6 day of November, 2020 to:

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

By: 