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**BEFORE THE ARIZONA STATE BOARD
OF PSYCHOLOGIST EXAMINERS**

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IN THE MATTER OF:

CASE NO. 2016-10

BARRIE WAGNER, Psy.D.

Holder of License No. 3269
For the Practice of Psychology
In the State of Arizona (Suspended)

**FIRST AMENDED INTERIM
CONSENT AGREEMENT and
ORDER FOR VOLUNTARY
SUSPENSION OF LICENSE**

Respondent

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In the interest of a prompt and judicious settlement of the above-captioned matter before the Arizona Board of Psychologist Examiners ("Board") and consistent with public interest, statutory requirements and responsibilities of the Board, and pursuant to A.R.S. § 32-2061 *et seq.* and A.R.S. §41-1092.07(F)(5), Barrie Wagner Psy.D. ("Respondent"), holder of License No. 3269 (Suspended) and the Board enter into this First Amended Interim Consent Agreement and Order for Voluntary Suspension of License ("First Amended Interim Consent Agreement") as an interim resolution of this matter until such time a final order is entered by the Board.

On March 10, 2016, the Board held a public meeting (telephonic) to discuss the above-captioned matter. Respondent was properly noticed and appeared personally and with legal counsel, Faren Akins (telephonically). At the conclusion of the Board's consideration of the issues, the parties agreed to enter into an Interim Consent Agreement, effective on March 16, 2016, until the conclusion of final administrative proceedings. During an August 12, 2016, public meeting, the Board further discussed the above-captioned matter. At the conclusion of the Board's consideration of the issues, the parties agreed to amend the March 16, 2016, Interim Consent Agreement, resulting in the current First Amended Interim Consent Agreement. On August 12, 2016, the Respondent appeared personally and with her legal counsel, Flynn Carey.

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JURISDICTION

1. The Arizona State Board of Psychologist Examiners ("Board") is the state agency authorized pursuant to A.R.S. § 32-2061 *et seq.*, and the rules promulgated thereunder, found in the Arizona Administrative Code ("A.A.C." or "rules") at R4-26-101 *et seq.*, to regulate and control the licensing of psychologists and behavior analysts in the State of Arizona.

2. Respondent holds a license to practice psychology in the State of Arizona, License No. 3269. Pursuant to a mutual agreement, the license is currently suspended.

FIRST AMENDED INTERIM CONSENT AGREEMENT

Respondent understands and agrees that:

1. The Board has jurisdiction over Respondent and the subject matter pursuant to A.R.S. § 32-2061 *et seq.*

2. Respondent has the right to consult with an attorney prior to entering into this First Amended Interim Consent Agreement.

3. Respondent has a right to a public hearing concerning this case. She further acknowledges that at such formal hearing she could present evidence and cross-examine witnesses. Respondent irrevocably waives her right to such a hearing as it relates to this First Amended Interim Consent Agreement.

4. Respondent irrevocably waives any right to rehearing or review or to any judicial review or any other appeal of this First Amended Interim Consent Agreement.

5. This First Amended Interim Consent Agreement shall be subject to the approval of the Board and shall be effective only when signed by the Executive Director. In the event that the Board does not approve this First Amended Interim 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 First Amended Interim Consent Agreement and this case proceeds to

1 hearing, Respondent shall assert no claim that the Board was prejudiced by its review and
2 discussion of this document or any records relating thereto.

3 6. The First Amended Interim Consent Agreement, once approved by the
4 Board and signed by the Respondent, shall constitute a public record which may be
5 disseminated as a formal action of the Board and shall be reported to the National
6 Practitioner Data Bank.

7 The following Interim Findings of Fact are no more and no less than allegations
8 which have not been proven. By signing this First Amended Interim Consent Agreement,
9 Respondent has not admitted to the allegations but does acknowledge that if this matter
10 were to proceed to a formal hearing the Board would offer evidence to the trier of fact in
11 support of the allegations.

12 **INTERIM FINDINGS OF FACT**

13 1. Respondent is a licensed psychologist in the State of Arizona, license
14 number 3269. The license is currently suspended per the mutual agreement of the parties.
15 Respondent has been licensed in Arizona since August of 1998.

16 2. Evidence obtained by the Board indicates that Respondent may suffer from
17 a mental, psychological and/or physiological condition that impedes her ability to safely
18 practice psychology, the specifics of which are maintained in the Board file.

19 3. On March 16, 2016, an Interim Consent Agreement went into effect and
20 required Respondent to undergo a psychiatric evaluation, a psychological evaluation and
21 a full physical examination. Respondent completed the required evaluations.

22 4. After a review of the evaluation results and during its August 12, 2016,
23 Board meeting, the parties agreed that, although Respondent is currently receiving
24 treatment, further evaluation is needed to ensure that the treatment being provided is
25 addressing the appropriate condition(s). As such, the parties agreed to amend the Interim
26 Consent Agreement to reflect the following agreements between the parties:

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a. **Neurological Examination:** Respondent has notified the Board that within thirty (30) days of the effective date of this First Amended Interim Consent Agreement, and consistent with the recommendations of the April 19, 2016, evaluation report, Respondent will arrange for an independent neurological examination to be conducted. Respondent will ensure that the examination addresses the items in the recommendations section of the April 19, 2016, evaluation report which were the basis for the recommendation for a neurological evaluation, to include consideration of a referral of Respondent for Magnetic Resonance Imaging (“MRI”) and/or Functional Magnetic Resonance Imaging (“fMRI”). Respondent voluntarily will seek *preapproval* from the Board’s Executive Director of the proposed physician (Medical Doctor or Doctor of Osteopathy) who Respondent seeks to perform the neurological examination. Within three (3) days of her selection of a physician, Respondent will notify the Board staff in writing of the proposed physician and provide Board staff with the date(s) that she is scheduled to undergo the examination. Once Respondent notifies the Board of the name of the physician who will conduct the neurological examination, the Board staff will provide the selected physician with collateral materials for review prior to Respondent’s examination, to include a copy of the First Amended Interim Consent Agreement. The final report will include the physician’s opinion as to whether there is a physiological/neurological basis for the issues of concern identified in the April 19, 2016, evaluation report and other collateral documents, as well as a recommendation regarding the need for MRI and/or fMRI, and the basis for the recommendation(s). If, in the physician’s opinion, there is a physiological/neurological basis for the issues of concern, the physician’s report will also address whether Respondent’s condition(s) would impede her ability to practice psychology safely, the prognosis of the condition(s), and any recommended course of treatment(s).

...

- 1 b. **MRI and/or fMRI:** If referred for an MRI and/or fMRI, Respondent has
2 agreed to obtain the same within thirty (30) days of the referral.
- 3 c. **Neuropsychological Examination:** Respondent may elect to obtain a
4 neuropsychological examination for the purpose of further evaluation. If
5 Respondent elects to undergo a neuropsychological examination, Respondent
6 voluntarily will seek *preapproval* from the Board's Executive Director of the
7 psychologist who Respondent proposes to perform the neuropsychological
8 examination. Within three (3) days of her selection of a proposed
9 psychologist, Respondent will notify the Board staff in writing of the
10 proposed psychologist, request approval of the proposed psychologist, and
11 provide Board staff with the date(s) that she is scheduled to undergo the
12 neuropsychological examination. Once approved, the Board staff will provide
13 the selected psychologist with collateral materials for review prior to
14 Respondent's examination, to include a copy of the First Amended Interim
Consent Agreement.
- 15 d. **Client:** The evaluators are conducting the aforementioned
16 evaluations/examinations solely for the benefit of the Board, are not treating
17 Respondent as a client or patient, and there is no doctor/patient relationship
18 between the evaluators/examiners and Respondent.
- 19 e. **Releases:** Respondent has agreed to sign, authorize and complete any and all
20 releases necessary as requested by the evaluators/examiners to help ensure a
21 complete and thorough evaluation/examination and to ensure reports are
22 properly released to the Board as set forth in the paragraph below.
- 23 f. **Final Written Reports:** The Board authorizes the Executive Director to
24 contact any and all evaluators/examiners to request written
25 evaluation/examination reports for the Board's review. All results of the
26 evaluations/examinations are the sole property of the Board, and shall be
released to the Board prior to release to the Respondent or any attorney

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retained on her behalf. Respondent will instruct any attorney retained on her behalf not to contact the evaluators/examiners. Any questions or concerns must be addressed to Board staff.

g. **Psychotherapy:** Respondent has agreed to voluntarily enter into psychotherapy for the purposes of augmenting other treatment services in which Respondent is engaged, and maintaining the changes needed for Respondent to demonstrate stability over time. Within thirty (30) days of the effective date of this First Amended Interim Consent Agreement, Respondent voluntarily will seek *preapproval* from the Board’s Executive Director of a proposed psychotherapist by notifying the Board staff in writing of the name of a proposed psychotherapist and the date that Respondent is scheduled to begin psychotherapy. Once approved, Board staff will provide the selected psychotherapist with collateral materials for review, to include a copy of the First Amended Interim Consent Agreement. Respondent will participate in psychotherapy at a frequency to be determined by the psychotherapist. The psychotherapist will provide quarterly written reports to the Board, due to the Board within 30 days after the end of each quarter. The first quarter will begin on the effective date of this First Amended Interim Consent Agreement. Respondent will sign, authorize and complete any and all releases necessary, as requested by the psychotherapist, to ensure the reports set forth in this paragraph are properly released to the Board. Respondent will participate in psychotherapy for the duration of this First Amended Interim Consent Agreement.

h. **Costs:** All costs associated with the aforementioned evaluations/examinations and psychotherapy are the sole responsibility of Respondent.

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INTERIM 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 discipline licensees who engage in unprofessional conduct (A.R.S. §§32-2063-2081) and to require a licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee’s expense. A.R.S. §32-2081(G).

The conduct and circumstances alleged in the Interim Findings of Fact constitute a violation of A.R.S. § 32-2061(15)(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 provided ineffective.

ORDER FOR VOLUNTARY SUSPENSION

Based upon the foregoing Findings of Fact and Conclusions of Law, the parties agree to the following Order:

1. Beginning on March 16, 2016, the effective date of the Interim Consent Agreement, Respondent’s License to practice psychology, license no. 3269 is **SUSPENDED**.
2. During the period of suspension, Respondent shall not practice psychology as defined in A.R.S. §32-2061(9) or hold herself out as a practicing psychologist or in any way convey to the public that she holds an active license to practice psychology.
3. The suspension of Respondent’s license shall continue until such time the Board enters a final order with respect to this matter after a formal hearing or acceptance of a Consent Agreement and Order as a final resolution of the matter.
4. Respondent shall comply with all terms of the Maricopa County Superior Court Order of June 15, 2016. Respondent shall ensure that her current treating provider

1 provides quarterly written reports to the Board, due to the Board within 30 days after the
2 end of each quarter. The first quarter shall begin on the effective date of this First
3 Amended Consent Agreement. Respondent will sign, authorize and complete any and all
4 releases necessary, as requested by the treatment provider, to ensure the reports set forth
5 in this paragraph are properly released to the Board.
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7 5. Prior to the lifting of the suspension of Respondent's license, Respondent
8 shall undergo all evaluations/examinations required or requested by the Board to provide
9 information relevant to whether Respondent may safely engage in the practice of
10 psychology.
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12 6. **Effective Date:** This First Amended Interim Consent Agreement shall be
13 effective on the date of entry below.
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15 7. **Failure to Comply:** Failure to timely comply with this First Amended
16 Interim Consent Agreement may constitute unprofessional conduct and result in
17 disciplinary action against the Respondent by the Board.

18 8. Respondent's license to practice psychology shall not be fully restored
19 unless and until the Board determines in its sole discretion that Respondent may safely
20 engage in the practice of psychology. Respondent understands that should the Board lift
21 the suspension of her license, the Board may order that she return to practice on a limited
22 basis and/or under certain terms and conditions.
23

24 9. Respondent's license to practice psychology expires on April 30, 2017.
25 Pursuant to the terms of this First Amended Interim Consent Agreement, Respondent's
26 license remains indefinitely suspended unless and until otherwise ordered by this Board.

1 In the unlikely event there is no final order entered in this matter at time Respondent's
2 license expires and Respondent fails to timely submit an application for renewal, her
3 license remains suspended pursuant to the terms of this First Amended Interim Consent
4 Agreement. If Respondent seeks timely renewal of her license and the Board grants her
5 application for renewal, the license shall automatically be placed on indefinite suspension
6 until such time the Board orders otherwise. The Board reserves the right to take other
7 administrative action against Respondent's application for renewal, including denial of
8 the same, in the event circumstances arise that justify such denial.
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10 10. Respondent has read and understands this First Amended Interim Consent
11 Agreement as set forth herein, and has had the opportunity to discuss this First Amended
12 Interim Consent Agreement with an attorney or has waived the opportunity to do so.
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14 11. Respondent understands that this First Amended Interim Consent
15 Agreement, or any part thereof, may be considered in any future disciplinary action
16 against her.
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18 12. Time is of the essence with regard to this agreement.

19 13. If Respondent fails to comply with the terms of this First Amended Interim
20 Consent Agreement, the Board shall properly institute proceedings for noncompliance
21 with this First Amended Interim Consent Agreement, which may result in suspension,
22 revocation, or other disciplinary and/or remedial actions. Respondent agrees that any
23 violation of this First Amended Interim Consent Agreement is a violation of A.R.S. § 32-
24 2061(15)(aa), which is violating a formal board order or consent agreement.
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1 14. Respondent understands that this First Amended Interim Consent
2 Agreement does not constitute a final resolution of this or other matters currently pending
3 before the Board, if any, and does not constitute any waiver, express or implied, of the
4 Board's statutory authority or jurisdiction regarding any other pending or future
5 investigation, action or proceeding. Respondent also understands that acceptance of this
6 First Amended Interim Consent Agreement does not preclude any other agency,
7 subdivision or officer of this state from instituting other civil or criminal proceedings
8 with respect to the conduct that is the subject of this First Amended Interim Consent
9 Agreement.
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12 15. Respondent understands that the foregoing First Amended Interim Consent
13 Agreement becomes effective upon signature of the Executive Director on behalf of the
14 Board. Any modification to this original document is ineffective and void unless
15 mutually approved by the parties in writing.
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17 16. Respondent understands that this First Amended Interim Consent
18 Agreement is a public record that may be publicly disseminated as a formal action of the
19 Board and shall be reported to the National Practitioner Data Bank.
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21 DATED this 27th day of September, 2016.
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23
24 Barrie R. Wagner
25 Barrie Wagner, Psy.D.
26 Respondent

23
24 Cindy Olvey
25 Cindy Olvey
26 Executive Director
Arizona Board of Psychologist Examiners

1 ORIGINAL filed
2 this 27th day of September, 2016 to:

3 Arizona State Board of
4 Psychologist Examiners
5 1400 W. Washington, Suite 235
6 Phoenix, Arizona 85007

6 COPY of the foregoing mailed
7 By Certified Mail No. 70092250 0002 71706547
8 this 27th day of September, 2016 to:

8 Barrie Wagner, Psy.D.
9 Address of Record

10 COPY of the foregoing mailed this
11 27th day of September, 2016 to:

12 Flynn Carey, Esq.
13 Mitchell Stein Carey PC
14 One Renaissance Square
15 2 North Central Ave., Suite 1900
16 Phoenix, AZ 85004

16 COPY of the foregoing sent via interagency mail this
17 27th day of September, 2016 to:

18 Jeanne M. Galvin
19 Assistant Attorney General
20 1275 W. Washington Street SGD/LES
21 Phoenix, Arizona 85007
22 Attorney for the State of Arizona

22 By: [Signature]
23 JMG/ah - 5313114

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