BEFORE THE ARIZONA STATE BOARD

OF PSYCHOLOGIST EXAMINERS

IN THE MATTER OF: **RACHELE ELISA "BARRIE" WAGNER, PSY.D.,** Holder of License No. 3269, **(Summarily Suspended)** For the Practice of Psychology, In the State of Arizona, Respondent	CASE NO. 20F-2009-PSY **INTERIM CONSENT AGREEMENT and ORDER FOR VOLUNTARY SUSPENSION OF LICENSE**

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), Rachele Elisa "Barrrie" Wagner ("Respondent"), holder of License No. 3269 (Summarily Suspended) and the Board enter into this Interim Consent Agreement and Order for Voluntary Suspension of License ("Interim Consent Agreement") as an interim resolution of this matter until such time a final order is entered by the Board.

On October 23, 2019, the Board held a public meeting to discuss the above-captioned matter. Despite being properly noticed, Respondent did not appear. At the conclusion of the Board's consideration of the issues, the Board found that based upon the factual allegations emergency action was required to protect the public health, safety and welfare and voted to summarily suspend Respondent's license to practice psychology. The matter was set for a formal administrative hearing before the Office of Administrative Hearings on December 2, 2019. In lieu of formal administrative proceedings, the parties have agreed to enter into this Interim Consent Agreement for Voluntary Suspension of License as an interim resolution of the matter.

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 Board Order, the license is currently summarily suspended.

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 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 Interim Consent Agreement.

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

5. This 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 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 Interim

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.

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

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

INTERIM FINDINGS OF FACT

1. On or about October 3, 2019, the Board opened complaint no. 20-09 against Respondent after receiving information from an anonymous person alleging that Respondent had been admitted to a behavioral health facility pursuant to a court-ordered evaluation. Respondent's boyfriend filed the petition for a court-ordered evaluation alleging that Respondent was engaging in behavior that some could conclude demonstrated that she was not safe to practice psychology, the specifics of which are contained in the Board's files.

2. Shabnam Sood, M.D., is Inpatient Medical Director for Valleywise Behavioral Health Center. On October 9, 2019, Dr. Sood sent written notification to the Board that Respondent had been admitted to her facility (Mesa) for a court-ordered evaluation. Dr. Sood further stated that based upon the professional opinion of Respondent's treating psychiatrist, Respondent is currently unsafe to practice psychology.

3. On October 23, 2019, the Board convened a public meeting to consider the possible summary suspension of Respondent's license. Respondent was properly noticed but did not appear. After considering all of the evidence, including Respondent's hospitalization records, the Board found that emergency action was required to protect the public health, safety and welfare and voted to summarily suspend Respondent's license.

4. Respondent was discharged from Valleywise Behavioral Health on October 15, 2019, after a 12-day hospitalization. She was discharged after a court ordered her release when, upon information and belief, only one witness appeared. Upon discharge, Respondent was compliant with medication and she was no longer exhibiting any danger to self/others.

5. Upon information and belief, Respondent was readmitted to Valleywise Behavioral Health (Maryvale) on November 5, 2019, after Respondent's boyfriend again filed a petition for a court-ordered evaluation alleging that Respondent was engaging in behavior that some could conclude demonstrate that she is not safe to practice psychology, the specifics of which are contained in the Board's files. Respondent remains hospitalized.

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(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 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. During the pendency of this Interim Consent Agreement and Order, Respondent's License to practice psychology, license no. 3269 REMAINS 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 conveys 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. Prior to the lifting of the suspension Respondent shall complete a fitness for duty evaluation. Within forty-five (45) days of the effective date of this Interim Consent Agreement and Order, Respondent shall schedule an appointment with one of the Board-approved providers listed below for a psychological evaluation and fitness for duty evaluation. The evaluation shall be completed within ninety (90) days of the effective date of this Interim Consent Agreement and Order. Within five (5) days of scheduling of the evaluation, Respondent shall notify the Board in writing of the name of the evaluator and the date/time of the evaluation. The effective date of this Interim Consent Agreement and Order is the date it is signed by the Board's Executive Director. **FAILURE TO COMPLY WITH ONE OR MORE OF THESE TERMS SHALL BE CONSIDERED A VIOLATION OF A BOARD ORDER AND MAY RESULT IN THE REVOCATION OF RESPONDENT'S LICENSE.**

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14354 N. Frank Lloyd Wright Blvd
Ste. 1
Scottsdale, AZ 85260
480-993-3463

b. Elizabeth Leonard, Ph.D.
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Ste. A-120
Phoenix, AZ 85014
480-699-6740

c. Kevin O'Brien, Ph.D.
9832 North Hayden Road
Scottsdale, AZ 85258
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5. Respondent shall ensure that the evaluator submits his/her final report to the Board office as soon as it is complete, but no more than 20 days from the date the evaluation. Respondent shall present this Interim Consent Agreement and Order to the evaluator prior to the date of the fitness for duty evaluation, or at the time of the evaluation, as directed by the psychologist.

6. **COMMUNICATION WITH EVALUATOR:** Because Respondent is undergoing the fitness for duty evaluation under Board Order, she shall instruct any attorney retained on her behalf not to contact the evaluator. Any questions or concerns must be addressed to Board staff.

7. **CLIENT:** The evaluator is conducting a psychological evaluations/fitness for duty evaluation solely for the benefit of the Board and is not treating Respondent as a client or patient. There is no doctor/patient relationship between the evaluator and Respondent.

8. **COSTS:** All costs associated with the compliance with this Interim Consent Agreement and Order and completion of the evaluation is the sole responsibility of Respondent, pursuant to A.R.S. §32-2081(G).

9. **RELEASES:** Respondent shall sign, authorize and complete any and all releases necessary as requested by the evaluator to help ensure a complete and thorough evaluation and to ensure the report is properly released to the Board as set forth above.

10. **FINAL WRITTEN REPORT:** The Board authorizes the Executive Director to contact the evaluator to request the final report in writing for the Board's review. All results of the psychological evaluation and fitness for duty evaluation are the sole property of the Board.

11. **FAILURE TO COMPLY:** Failure to timely comply with this Interim Consent Agreement and Order may constitute unprofessional conduct and may result in disciplinary action against Respondent by the Board.

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

13. Respondent's license to practice psychology expires on January 31, 2021. Pursuant to the terms of this Interim Consent Agreement, Respondent's license remains indefinitely suspended unless and until otherwise ordered by this Board. In the unlikely event there is no final order entered in this matter at time Respondent's license expires and Respondent fails to timely submit an application for renewal, her license remains suspended pursuant to the terms of this Interim Consent Agreement. If Respondent seeks timely renewal of her license and the Board grants her application for renewal, the license shall automatically be placed on indefinite suspension until such time the Board orders

otherwise. The Board reserves the right to take other administrative action against Respondent's application for renewal, including denial of the same, in the event circumstances arise that justify such denial.

14. Respondent has read and understands this Interim Consent Agreement as set forth herein, and has had the opportunity to discuss this Interim Consent Agreement with an attorney or has waived the opportunity to do so.

15. Respondent understands that this Interim Consent Agreement, or any part thereof, may be considered in any future disciplinary action against her.

16. Time is of the essence with regard to this agreement.

17. If Respondent fails to comply with the terms of this Interim Consent Agreement, the Board shall properly institute proceedings for noncompliance with this Interim Consent Agreement, which may result in suspension, revocation, or other disciplinary and/or remedial actions. Respondent agrees that any violation of this Interim Consent Agreement is a violation of A.R.S. § 32-2061(16)(aa), which is violating a formal board order or consent agreement.

18. Respondent understands that this Interim Consent Agreement does not constitute a final resolution of this or 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. Respondent also understands that acceptance of this Interim Consent Agreement does not preclude any other agency, subdivision or officer of this state from instituting other civil or criminal proceedings with respect to the conduct that is the subject of this Interim Consent Agreement.

19. Respondent understands that the foregoing Interim Consent Agreement becomes effective upon signature of the Executive Director on behalf of the Board. Any

modification to this original document is ineffective and void unless mutually approved by the parties in writing.

20. Respondent understands that this Interim Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board and shall be reported to the National Practitioner Data Bank.

DATED this ~~22~~ 13th day of ~~November~~ December, 2019.

Barrie Wagner, Psy.D.
Respondent

Heidi Herbst Paakkonen
Executive Director
Arizona Board of Psychologist Examiners

ORIGINAL of the foregoing e-filed
this 13 day of December, 2019to:

Arizona State Board of
Psychologist Examiners
1740 W. Adams
Phoenix, AZ 85007

COPY of the foregoing mailed by Certified Mail No. 7016-2140-0000-6959-4060
this 13 day of December, 2019 to:

Barrie Wagner, Psy.D.
Address of Record

COPY of the foregoing sent via interagency mail this 13 day of December, 2019 to:

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

By: Jennifer Michael
JMG/ah - 8358627