

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Petition for Interim
Suspension Order Against:

ROBERT EDWARD BRIZENDINE, PH.D.

Respondent.

Case No. 1F-2012-227531

OAH No. 2013100041

**INTERIM ORDER PURSUANT TO
GOVERNMENT CODE SECTION 494**

On October 17, 2013, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Lori Jean Forcucci, Deputy Attorney General, represented petitioner.

Elliott N. Kanter, Attorney at Law, represented respondent.

The matter was submitted on October 17, 2013.

FACTUAL FINDINGS

1. Thomas O'Connor, Interim Executive Director, California Board of Psychology, Department of Consumer Affairs (Board), filed Petition for Interim Suspension Order No. 1F-2012-227531 in his official capacity on September 26, 2013. Respondent filed an opposition, including declarations and other evidence, on October 17, 2013.

On October 1, 2013, a hearing on an ex parte petition for interim suspension order was heard. At the conclusion of the hearing, the administrative law judge issued an Ex Parte Interim Order suspending respondent's license pending further court order and ordering a hearing for October 17, 2013.

License History

2. On August 1, 1989, the Board issued Psychologist's License Number PSY 11131 to respondent.

3. On January 5, 2011, The Board's Executive Officer filed Accusation No. 1F-2010-205772 against respondent. It contained three causes for discipline. The first alleged respondent used a controlled substance (methamphetamine) in a manner or to an extent to be dangerous to himself, to others, or the public in violation of Business and Professions Code section 2960, subdivision (b). It was alleged that respondent abused methamphetamine between February and April 2009, he first smoked marijuana in the tenth grade, he first used methamphetamine eight years earlier, and he has used methamphetamine since that time. The first cause for discipline also alleged respondent had been arrested for driving under the influence of methamphetamine in 2003, and in an interview with a District Attorney Investigator in 2010, respondent admitted to continued methamphetamine use under the following circumstances:

a. In or about February, March or April 2009, a dancer at a strip club gave respondent the name of a woman who could sell illegal drugs to him. At about this time, respondent purchased \$50.00 from the woman and he gave her his address.

b. Continuing after February, March or April 2009, the woman came to respondent's residence with a male dancer who sold illegal drugs to respondent and together they used illegal drugs. Some time thereafter, the male dancer took a photograph of respondent smoking illegal drugs and later requested and received favors and money from respondent under threat of making the photographs public. The male dancer demanded \$15,000 for his silence and they negotiated a deal whereby respondent paid him \$8,000 to prevent the dancer from revealing respondent's drug use.

c. In or about February, March or April 2009 and thereafter, respondent allowed the woman and male dancer access to his place of business and residence where respondent kept a laptop which contained patient reports and work-related software. The laptop was stolen and the male dancer requested \$400 from respondent for its return. The laptop was returned but someone had tampered with it. Thereafter, the laptop was stolen again and never returned.

The second cause for discipline alleged that respondent knowingly undertook work despite personal problems which may have resulted in the distortion of appraisals of others and inferior professional services or harm to respondent's patients or clients in violation of Business and Professions Code section 2960, subdivision (i), and Title 10, California Code of Regulations, section 1396. It further alleged that in legal cases in which respondent provided forensic opinions and reports, the verdicts could be subject to reconsideration or appeal at any time the losing party learned that he provided opinions while addicted.

The third cause of discipline alleged that respondent failed in his primary obligation to take reasonable precautions to protect confidential information stores in his work-related laptop computer, having allowed it to be stolen a second time while it still contained confidential patient information and testing programs, in violation of Business and Professions Code section 2960, subdivision (j), and APA Standard 4.01.

4. Respondent signed a Stipulated Settlement and Disciplinary Order on

December 29, 2011, that settled Accusation number 1F-2012-205772. In the stipulation, respondent admitted each and every allegation in the first cause of discipline and thereby subjected his license to disciplinary action. The Disciplinary Order provided that respondent's license would be revoked, the revocation would be stayed, and respondent would be placed on probation for five years. Among the conditions of probation were conditions that required a psychological evaluation, a practice monitor, a minimum of one hour a week of psychotherapy, entry into an alcohol and drug abuse treatment program, participation in an on-going treatment program, drug testing, completion of a course in laws and ethics, cost recovery, and submission of quarterly reports.

The Board adopted the Stipulated Settlement and Disciplinary Order on February 16, 2012, and it became effective on March 17, 2012.

5. On January 23, 2013, the Board's Executive Officer filed Accusation and Petition to Revoke Probation number 1F-2012-227531. It alleged that respondent failed to comply with the terms of probation enumerated in paragraph 4, above.

6. On August 26, 2013, a hearing on the accusation and petition to revoke probation was scheduled. Respondent appeared at the hearing but during the hearing became ill and left. The hearing proceeded without him and evidence was introduced by Ms. Forcucci who represented the complainant. Later that day after the hearing concluded, Ms. Forcucci submitted a request to the administrative law judge to re-open the hearing to allow a re-presentation of complainant's case in chief and any evidence offered by respondent. The administrative law judge granted the request on August 29, 2013. He ordered a de novo hearing and struck the August 26, 2013, hearing in its entirety.

A new hearing date has not been set.

Allegations of the Petition

7. In a petition brought under Government Code section 494, the petitioner must establish through affidavits by a preponderance of the evidence that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Business and Professions Code and that permitting the licensee to continue to engage in the profession will endanger the public health, safety, or welfare.

8. Petitioner alleges that respondent is using methamphetamine, failing to comply with the Board's orders including but not limited to an order to submit to a psychological examination as a term of his probation, and causing physical harm to Ms. Forcucci. Petitioner further alleges that respondent's conduct demonstrates that he is a danger to the public.

Evidence of Present Methamphetamine Use

9. Troy Holmes is an investigator with the Board. Before becoming a Board investigator on July 1, 2013, he worked for nine years as a police officer and sergeant for the

California State University Police Department. Included within the training her received to become a peace officer, Investigator Holmes received training in recognizing behavior in persons that indicate drug and alcohol use and abuse, persons under the influence of drugs, mental illness, and potentially dangerous behavior. He received formal basic training in narcotics identification, usage, illegal usage and sale, and he has made numerous arrests for drug-related offenses while working in a patrol capacity.

Investigator Holmes submitted a declaration in support of the petition. He wrote that on August 23, 2013, he was present at a meeting between respondent and Ms. Forcucci at the Attorney General's office in San Diego. The purpose of the meeting was to give respondent the opportunity to review and sign a stipulation that provided for the surrender of respondent's license.

Investigator Holmes wrote that he and respondent were alone in a conference room for a period of time, and he observed respondent to display "nervous behavior" and respondent "seemed to be agitated easily." Investigator Holmes indicated that respondent continually looked over his shoulder although no one was there and asked numerous times why the investigator was there. Investigator Holmes said he was there to assist Ms. Forcucci. Investigator Holmes wrote that he noticed respondent's "breathing was rapid and he continually fidgeted with his clothing." Investigator Holmes suggested to respondent that he calm down and respondent said that the investigator made him nervous because he was a male.

Investigator Holmes wrote that when Ms. Forcucci returned, she sat next to respondent and they began to discuss the stipulated surrender. It appeared to Investigator Holmes that respondent refused to read it and began to complain that he was feeling stressed because the investigator was in the room. Investigator Holmes heard Ms. Forcucci try to reassure or calm respondent. Investigator Holmes noticed that respondent spoke quickly and changed subjects erratically. They continued to discuss respondent's request to have the investigator leave the room but Ms. Forcucci wanted him there. Then respondent asked for some water and when he was told that there was no water available in the office, respondent wanted to leave the office and buy water. Ms. Forcucci offered to buy respondent water when they were finished.

Investigator Holmes wrote in his declaration that respondent said he wanted to tape record the meeting and he took what appeared to be a tape recorder out of his briefcase. Respondent however did not turn it on. Respondent returned his attention to the stipulation and to Investigator Holmes, respondent "became distressed" as he looked at an attachment. According to Investigator Holmes, respondent "expressed anxiety" about the contents of the attachment and despite assurances that he was looking at the wrong document, respondent's "behavior became more agitated." Ms. Forcucci decided that it would not be feasible to resolve the matter with a stipulation and she withdrew her offer of settlement.

At this point, according to Investigator Holmes' declaration, Ms Forcucci began to gather her papers but respondent forcefully took hold of the stipulation and said he wanted to take it with him. Ms. Forcucci said he could not have it and grabbed the other end of the

document. Respondent tried to put the document into his briefcase and shut the lid of the briefcase as he insisted he wanted to take it with him. Ms. Forcucci continued to say that respondent could not have it, and each time respondent placed the document in his briefcase and closed the lid, he closed the lid on Ms. Forcucci's wrist. Investigator Holmes then grabbed the briefcase and pried it open, which allowed Ms. Forcucci to remove her hands and keep the document. Investigator Holmes escorted respondent from the building.

Investigator Holmes wrote the following in his declaration:

I was with [respondent] for approximately 45 minutes on August 23, 2013. During that time, I observed the following behavior: [Respondent] changed subjects erratically and was unable to focus on small tasks, or overcome basic challenges; [respondent] was unable to comprehend basic documents presented to him; [respondent's] behavior would shift from sadness to anger quickly, without warning; [respondent's] breathing was rapid and he continually fidgeted with his clothing, behaviors which are consistent with users of narcotics, specifically, stimulants such as methamphetamine. I would describe [respondent's] demeanor on August 23, 2013 as anxious, unstable, volatile, and erratic.

10. Ms. Forcucci submitted a declaration in support of the petition. She wrote that she is a Deputy Attorney General and was assigned to prosecute the case against respondent. She described the meeting with respondent and Investigator Holmes on August 23, 2013. Ms. Forcucci wrote that the discussion regarding the proposed settlement never progressed because respondent "would not settle down." She wrote that at first respondent asked why Investigator Holmes was present and he wanted the investigator to leave. Ms. Forcucci wanted the investigator to remain. Ms. Forcucci noticed that respondent changed the conversation from topic to topic and became highly distracted when an office worker opened the door but quickly left. When they discussed the stipulation, according to Ms. Forcucci, respondent did not understand the difference between the stipulation itself and an attachment. After 45 minutes, Ms. Forcucci withdrew the offer.

Ms. Forcucci wrote that as she gathered her papers, respondent said he wanted to keep the stipulation. She said he could not keep it. They each held the document. Respondent then tried to pull it away and put it inside his briefcase, and he was very insistent. Ms. Forcucci insisted that the document remain with her. Respondent "kept closing" the lid of the briefcase on both of Ms. Forcucci's wrist. Her right wrist became bruised and swollen from being hit by the lid and her left wrist was sore with the bruising less apparent.

11. Denise Russell is a probation monitor for the Board. Before becoming a probation monitor in 2005, she was a correctional officer for two years and worked on a locked male psychiatric ward. In that capacity, she regularly interacted with inmates who were incarcerated with methamphetamine and drug and alcohol abuse-related convictions. She learned about the unstable and erratic behavior of such inmates. Since becoming a

probation monitor, Ms. Russell received training relating to drug and alcohol awareness.

Ms. Russell submitted a declaration in support of the petition. She wrote that she met respondent on March 12, 2012 before his probation began. She described him at that time as “business-like” and he “was able to calmly and intelligently discuss the terms of his probation.” Ms. Russell explained the terms of probation to him. One of the terms of probation required respondent to submit quarterly reports, and in the reports he submitted, he indicated he was working and complying with the terms of probation.

Ms. Russell was present at the hearing on August 26, 2013. She wrote in her declaration that when she observed respondent, his “behavior had changed drastically since our last meeting.” She wrote that respondent could not hold a topic when he spoke and his tone of voice alternated between anger and wailing. She indicated that respondent claimed he was suffering from post-traumatic stress disorder and insisted he was not using drugs, although no one had brought up the subject. He said he wanted the administrative law judge to accept his surrender at the same time he said he wanted to defend his license. Ms. Russell characterized respondent’s demeanor “as unpredictable, out of control, and consistent with the drug-driven behaviors that [she] had seen in [her] work at the California Department of Corrections.”

Respondent’s Compliance with the Terms of Probation

12. In her declaration, Ms. Russell reported that by October 8, 2012, respondent was in violation of nine terms of probation, including his failure to: submit to a psychological evaluation by a board appointed psychologist by June 17, 2012; identify a practice monitor to review his work; participate in 26 weeks of psychotherapy; enter an alcohol and drug treatment program; participate in weekly group therapy; and submit biological fluid samples for testing.

Ms. Russell reported that a psychological evaluation was scheduled for September 2012 but respondent cancelled the appointment.

Respondent’s Declaration

13. Respondent submitted a declaration in opposition to the petition and wrote the following:

He called Ms. Forcucci on August 21, 2013 and asked why his letter of October 26, 2012, in which he surrendered his license, had not been followed up. She replied that a copy of the stipulation had been sent to his former attorney and a facsimile had been sent to his present attorney. Respondent wrote that Ms. Forcucci demanded that he sign the stipulation by 5:00 p.m. or the deal was off, and this gave him two hours to review the document.

Respondent spoke to Ms. Forcucci on August 23, 2013, by telephone and more firmly requested to finalize the surrender of his license. Ms. Forcucci said the stipulation had to be reworked and four hours later called him, demanding that he come to her office to sign the

new stipulation. Respondent indicated he was “extraordinarily anxious and frankly afraid.”

Respondent went to Ms. Forcucci’s office and was seated at a table in a conference room with Mr. Holmes, whom he called a “trainee.” According to respondent, Mr. Holmes asked him many questions about many subjects, shifting from one subject to another. Respondent found it annoying and asked Mr. Holmes to focus on signing the documents. When Ms. Forcucci entered the room she sat very close to respondent and placed two documents in front of him. Respondent did not think they looked the same as the ones they had discussed on the phone.

Respondent asked for a glass of water and was told there was no water available. Respondent asked to go outside the building to get some water; this request was denied.

Respondent asked if he could read the document separately and away from Ms. Forcucci and Mr. Holmes because they were sitting right next to him, but Mr. Holmes declined. He said he could move outside the room but he did not leave the room. Respondent tried to read the document but he was distracted by Ms. Forcucci and Mr. Holmes because they were sitting so close to him. Ms. Forcucci then put her hands on respondent’s forearms and this made him “very uncomfortable.” Respondent did not believe the document he was reading was the same as the one he had seen before.

Respondent asked to record the signing. Ms. Forcucci whispered something to Mr. Holmes and then said the meeting was over. Respondent thought he could take the stipulation with him and attempted to place it in his briefcase. According to respondent, a “short skirmish” ensued, and respondent found that people were reaching into his briefcase and Ms. Forcucci had a hold of the document, as did respondent. Respondent wrote that their “hands were around [his] briefcase and she apparently scraped her hands on [his briefcase].” Respondent did not intend to close the briefcase on her hand or hurt her. He called what happened “a reaction to her attempting to regain possession of the stipulation and any injury to Ms. Forcucci was accidental.” The meeting then ended.

Respondent ended his declaration by writing that he had not used methamphetamine during that day and was not under the influence of any non-prescribed drug. Respondent reported that he was very anxious and he had an anxiety condition at the time of the meeting.

Dr. Kalish’s Report

14. Mark A. Kalish, M.D., a physician board certified in Neurology and Forensic Psychology, wrote a report dated October 13, 2013, at the request of respondent’s attorney. Dr. Kalish reviewed the declaration from Ms. Russell, Mr. Holmes, and Ms. Forcucci.

Dr. Kalish first summarized Mr. Holmes’ observations and conclusions and then wrote:

While the behaviors described above may be related to drug use they are certainly likely to be observed under the subject

circumstances and in an individual with [respondent's] history.

Referring to the 10 observations enumerated above, 1) it is not hard to understand than an individual entering a meeting in which he is going to surrender his license would be agitated and nervous. This is a life changing decision for [respondent]...It is not difficult to understand why [respondent] would be nervous while being watched and observed by a male police officer given that male police officers played an integral role in the events that led to the subject meeting...rapid breezing (sic), fidgeting with one's clothes, speaking rapidly, changing subjects erratically, and wanting water for a dry mouth are frequent manifestations of anxiety...Officer Holmes observed that when respondent was reviewing documents he became distressed. This is also consistent with an anxiety state brought about by the proceedings.

In my opinion, while the observations of Officer Holmes may be consistent with the use of stimulants such as methamphetamine absent drug testing for such drugs it cannot be stated to a reasonable degree of medical certainty that the observed symptoms are the result of such drug use. I believe that the observations made by Officer Holmes are wholly consistent with [respondent] having been extremely anxious at the time...

In my opinion, the behaviors observed [by Ms. Russell] are most consistent with the anxiety and stress [respondent] was experiencing at the time. What Ms. Russell characterizes as inconsistent statements are a reflection of [respondent's] ambivalence about giving up his livelihood. This is certainly understandable under these circumstances. Again absent drug testing it cannot be stated to a reasonable degree of medical certainty that the behaviors observed by Ms. Russell are the result of drug use.

LEGAL CONCLUSIONS

1. Business and Professions Code section 494 provides in part:

(a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

The standard of proof required to obtain an interim order in a proceeding under section 494 is preponderance of the evidence.

2. Business and Professions Code section 2960, subdivision (b), provides that the Board may suspend or revoke the license of a licensee if the licensee is guilty of unprofessional conduct, which includes use of any controlled substance to the extent or in a manner dangerous to himself, any other person, or the public, or impairs his ability to perform the work of a psychologist with safety to the public.

3. Cause to issue an interim order suspending respondent's license was established by Findings 3 through 12 in that respondent engaged in acts constituting a violation of Business and Professions Code section 2960, subdivision (b), and that permitting respondent to engage in the practice of psychology would endanger the public health, safety, or welfare.

4. In order to properly analyze respondent's conduct on August 23 and 26, 2013, consideration must be given to respondent's past. His conduct on those dates cannot be viewed in isolation. Respondent was disciplined in 2012 because he used methamphetamine. The accusation filed in 2011 alleged that respondent used methamphetamine in 2009 and before. Respondent admitted using methamphetamine when he signed the stipulation in 2011 and respondent's use of methamphetamine resulted in the imposition of a number of conditions of probation that sought to address his addiction and at the same time protect the public.

Respondent has not complied with the terms of probation imposed to address his illegal drug use. Accordingly, the Board filed a petition to revoke probation and scheduled a hearing on the petition for August 26, 2013. Ms. Russell's declaration established for purposes of this proceeding that respondent did not comply with the conditions imposed because of respondent's drug usage (Factual Finding 12), and respondent offered no evidence to refute the information contained in Ms. Russell's declaration.

Thus, as of August 23, 2013, respondent, an admitted abuser of methamphetamine, had not been evaluated by a psychologist, had not had his practice reviewed, had not participated in psychotherapy, had not entered an alcohol and drug treatment program, had not participated in weekly group therapy, and had not submitted to biological fluid testing, over a period of a year-and-a-half. In the absence of compliance with these conditions of probation, and in particular, the absence of any negative tests for illegal drug use, it is difficult to view respondent in any way other than as a person who has continued to abuse

illegal drugs. Moreover, respondent wrote in his declaration that he had not used methamphetamine on August 23, 2013 and was not under the influence of any non-prescribed drug. The absence of any claim that he has not used illegal drugs over the preceding 18 months is telling.

With that in mind, respondent's conduct on August 23 and 26, 2013, while equivocal, must be viewed as an indication that he continues to use controlled substances. Dr. Kalish recognized that respondent's conduct was consistent with the use of methamphetamine or other stimulant, but concluded that in the absence of a drug test, it could not be established to a reasonable degree of medical certainty that the behaviors observed by Mr. Holmes and Ms. Russell were the result of drug use, and therefore could have been the product of anxiety or stress. The standard of proof in this proceeding is not that high. It is concluded that the preponderance of the evidence established that respondent continues to use controlled substances in violation of Business and Professions Code section 2960, subdivision (b). Furthermore, respondent's failure to comply with the conditions of probation relating to illegal drug use, and in particular his failure to undergo a psychological evaluation, coupled with the declarations describing respondent's behavior on August 23 and 26, 2013, support the conclusion that respondent, by continuing to use controlled substances constitutes a danger to the public health, safety, or welfare.

ORDER

Psychologist's License Number PSY 11131, issued to respondent Robert Edward Brizendine, is suspended pursuant to Business and Professions Code section 494.

DATED: October 24, 2013.



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

**BEFORE THE
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. 1F-2012-227531

ROBERT EDWARD BRIZENDINE, PH.D.
1550 Hotel Circle North, #310
San Diego, CA 92108

Psychologist License No. PSY 11131

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Disciplinary Order is hereby adopted by the Board of Psychology, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on March 20, 2014.

It is so ORDERED February 18, 2014.



FOR THE BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
ANTONETTE SORRICK, EXECUTIVE OFFICER

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 LORI JEAN FORCUCCI
Deputy Attorney General
4 State Bar No. 125345
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2080
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

9 **BEFORE THE**
10 **BOARD OF PSYCHOLOGY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation and Petition to
13 Revoke Probation Against:

Case No. 1F-2012-227531

**STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY ORDER**

14 **ROBERT EDWARD BRIZENDINE, Ph.D.**
15 5694 Mission Center Road, Suite 602-240
San Diego, CA 92108

16 Psychologist License No. PSY 11131

17 Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
20 proceeding that the following matters are true:

21 **PARTIES**

22 1. Antonette Sorrick is the Executive Officer of the Board of Psychology, and is
23 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
24 Lori Jean Forcucci, Deputy Attorney General.

25 2. Robert Edward Brizendine, Ph.D. (Respondent) is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel, at his own
27 expense, in this proceeding.

28 ///

1 CULPABILITY

2 8. Respondent admits the complete truth and accuracy of each and every charge and
3 allegation in Accusation and Petition to Revoke Probation No. 1F-2012-227531, agrees that cause
4 exists for discipline and hereby surrenders his Psychologist License No. PSY No. 11131 for the
5 Board's formal acceptance.

6 9. Respondent understands that by signing this stipulation he enables the Board to issue
7 an order accepting the surrender of his Psychologist License No. 11131 without further notice to
8 or opportunity to be heard.

9 CONTINGENCY

10 10. The parties agree that this Stipulated Surrender of License and Disciplinary Order
11 shall be submitted to the Board for its consideration in the above-entitled matter and, further, that
12 the Board shall have a reasonable period of time in which to consider and act on this Stipulated
13 Surrender of License and Disciplinary Order after receiving it.

14 11. This Stipulated Surrender of License and Disciplinary Order shall be subject to
15 approval of the Board. The parties agree that this Stipulated Surrender of License and
16 Disciplinary Order shall be submitted to the Board for consideration in the above-entitled matter
17 and, further, that the Board shall have a reasonable period of time in which to consider and act on
18 this Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this
19 stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or
20 seek to rescind this stipulation prior to the time the Board of Psychology considers and acts upon
21 it.

22 12. The parties agree that this Stipulated Surrender of License and Disciplinary Order
23 shall be null and void and not binding upon the parties unless approved and adopted by the Board,
24 except for this paragraph, which shall remain in full force and effect. Respondent fully
25 understands and agrees that in deciding whether or not to approve and adopt this Stipulated
26 Surrender of License and Disciplinary Order, the Board may receive oral and written
27 communications from its staff and/or the Attorney General's office. Communications pursuant to
28 this paragraph shall not disqualify the Board, any member thereof, and/or any other person from

1 future participation in this or any other matter affecting or involving Respondent. In the event
2 that the Board, in its discretion, does not approve and adopt this Stipulated Surrender of License
3 and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall
4 be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any
5 disciplinary action by either party hereto. Respondent further agrees that should the Board reject
6 this Stipulated Surrender of License and Disciplinary Order for any reason, Respondent will
7 assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review,
8 discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or
9 of any matter or matters related hereto.

10 ADDITIONAL PROVISIONS

11 13. This Stipulated Surrender of License and Disciplinary Order is intended by the parties
12 herein to be an integrated writing representing the complete, final and exclusive embodiment of
13 the agreements of the parties in the above-entitled matter.

14 14. The parties understand and agree that copies of this Stipulated Surrender of License
15 and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of
16 original documents and signatures and, further, that such copies shall have the same force and
17 effect as originals.

18 15. In consideration of the foregoing admissions and stipulations, the parties agree the
19 Board may, without further notice to or opportunity to be heard by Respondent, issue and enter
20 the following Disciplinary Order:

21 ORDER

22 IT IS HEREBY ORDERED that Psychologist License No. PSY 11131, issued to
23 Respondent Robert Edward Brizendine, Ph.D., is surrendered and accepted by the Board of
24 Psychology.

25 1. The surrender of Respondent's Psychologist License No. PSY 11131 and the
26 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
27 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
28 of Respondent's license history with the Board of Psychology.

1 2. Respondent shall lose all rights and privileges as a Psychologist in California as of the
2 effective date of the Board's Decision and Order.

3 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
4 issued, its wall certificate on or before the effective date of the Decision and Order.

5 4. If Respondent ever applies to the Board of Psychology for licensure or petitions for
6 reinstatement in the State of California, the Board shall treat it as a petition for reinstatement of
7 his psychology license. Respondent must comply with all the laws, regulations and procedures
8 for licensure in effect at the time the application or petition is filed.

9 5. If Respondent should ever apply or reapply for a new license or certification, or
10 petition for reinstatement of a license, to the Board or to any other health care licensing agency in
11 the State of California, all of the charges and allegations contained in Accusation and Petition to
12 Revoke Probation No. 1F-2012-227531 shall be deemed to be true, correct, and admitted by
13 Respondent for the purpose of any Statement of Issues, Petition for Reinstatement or any other
14 proceeding seeking to deny or restrict licensure.

15 6. If Respondent ever petitions the Board of Psychology for reinstatement of his
16 surrendered Psychologist License No. PSY 11131, or applies or reapplies to the Board for a new
17 license or certificate, upon filing his petition for reinstatement or application for licensure,
18 Respondent shall be required to reimburse the Board for its costs of investigation and
19 enforcement in the amount of twenty one thousand, eight hundred and forty-five dollars and no
20 cents (\$21,845.00), for its costs of investigation and enforcement in Case No. 1F-2012-227531.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ACCEPTANCE

I have carefully read this Stipulated Surrender of License and Disciplinary Order. I fully understand the terms and conditions and other matters contained herein. I understand the effect this stipulation will have on my Psychologist License No. PSY 11131. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Psychology.

DATED:

January 6, 2014

[Signature]
ROBERT EDWARD BRIZENDINE, PH.D.
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Psychology of the Department of Consumer Affairs.

Dated: *1-6-14*

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General

[Signature]
LORI JEAN FORCUCCI
Deputy Attorney General
Attorneys for Complainant

SD2012704627

Exhibit A

Accusation and Petition to Revoke Probation No. 1F-2012-227531

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 LORI JEAN FORCUCCI
Deputy Attorney General
4 State Bar No. 125345
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2080
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
BOARD OF PSYCHOLOGY
SACRAMENTO 4/23/13
BY *[Signature]*

10 BEFORE THE
11 BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation and Petition to
14 Revoke Probation Against:

15 **ROBERT EDWARD BRIZENDINE, PH.D.**
1550 Hotel Circle North, #310
16 San Diego, CA 92108

17 Psychologist License No. PSY 11131

18 Respondent.

Case No. 1F-2012-227531

ACCUSATION AND PETITION TO
REVOKE PROBATION

19 Complainant alleges:

20 PARTIES

21 1. Robert I. Kahane, J.D. (Complainant) brings this Accusation and Petition to Revoke
22 Probation solely in his official capacity as the Executive Officer of the Board of Psychology,
23 Department of Consumer Affairs.

24 2. On or about August 1, 1989, the Board of Psychology issued Psychologist License
25 No. PSY 11131 to Robert Edward Brizendine, Ph.D. (respondent). Psychologist License No.
26 PSY 11131 was in effect at all times relevant to the charges brought herein and will expire on
27 April 30, 2013, unless renewed.

28 ///

1 8. Code section 125.3 states, in pertinent part:

2 (a) Except as otherwise provided by law, in any order issued in resolution
3 of a disciplinary proceeding before any board within the department or before the
4 Osteopathic Medical Board upon request of the entity bringing the proceedings,
5 the administrative law judge may direct a licentiate found to have committed a
6 violation or violations of the licensing act to pay a sum not to exceed the
7 reasonable costs of the investigation and enforcement of the case.

8 ...

9 (c) A certified copy of the actual costs, or a good faith estimate of costs
10 where actual costs are not available, signed by the entity bringing the proceeding
11 or its designated representative shall be prima facie evidence of reasonable costs of
12 investigation and prosecution of the case. The costs shall include the amount of
13 investigative and enforcement costs up to the date of the hearing, including, but
14 not limited to, charges imposed by the Attorney General.

15 (d) The administrative law judge shall make a proposed finding of the
16 amount of reasonable costs of investigation and prosecution of the case when
17 requested pursuant to subdivision (a). The finding of the administrative law judge
18 with regard to costs shall not be reviewable by the board to increase the cost
19 award. The board may reduce or eliminate the cost award, or remand to the
20 administrative law judge if the proposed decision fails to make a finding on costs
21 requested pursuant to subdivision (a).

22 ...

23 (i) Nothing in this section shall preclude a board from including the
24 recovery of the costs of investigation and enforcement of a case in any stipulated
25 settlement.

26 ...

27 ///

28 ///

1 of a least one hour per week of individual face to face meetings and shall continue
2 during the entire probationary period. The respondent shall provide the monitor
3 with a copy of this Decision and access to respondent's fiscal and/or patient
4 records. Respondent shall obtain any necessary patient releases to enable the
5 monitor to review records and to make direct contact with patients. Respondent
6 shall execute a release authorizing the monitor to divulge any information that the
7 Board may request. It shall be respondent's responsibility to assure that the
8 monitor submits written reports to the Board or its designee on a quarterly basis
9 verifying that monitoring has taken place and providing an evaluation of
10 respondent's performance.

11 "Respondent shall notify all current and potential patients of any term or
12 condition of probation which will affect their therapy or the confidentiality of their
13 records (such as this condition which requires a practice monitor/billing monitor).
14 Such notifications shall be signed by each patient prior to continuing or
15 commencing treatment.

16 "If the monitor quits or is otherwise no longer available, respondent shall
17 obtain approval from the Board for a new monitor within 30 days. If no new
18 monitor is approved within 30 days, respondent shall not practice until a new
19 monitor has been approved by the Board or its designee. During this period of
20 non-practice, probation will be tolled and will not commence again until the period
21 of non-practice is completed. Respondent shall pay all costs associated with this
22 monitoring requirement. Failure to pay these costs shall be considered a violation
23 of probation."

24 12. Respondent's probation is further subject to revocation, separately and severally, for
25 each of his failures, because he failed to comply with Probation Condition 2, referenced above, in
26 that he failed to identify a practice monitor within 90 days of the effective date of the Decision
27 and Order of March 17, 2012, or thereafter, and no practice monitor has been identified and no
28 practice monitor reports have been submitted to the Board, to date.

1 shall retain continuing jurisdiction over the respondent's license and the period of
2 probation shall be extended until the Board or its designee determines that the
3 respondent is mentally fit to resume the practice of psychology without
4 restrictions.

5 "Cost of psychotherapy is to be paid by the respondent."

6 14. Respondent's probation is further subject to revocation, separately and severally, for
7 each of his failures, because he failed to comply with Probation Condition 4, referenced above, in
8 that he failed to participate in a minimum of one hour of therapy per week for 26 weeks. The
9 facts and circumstances regarding these violations are as follows:

10 15. During the time period commencing 90 days after the effective date of the Decision
11 and Order of March 17, 2012, respondent has received 7 therapy sessions on or about April 6,
12 2012, April 10, 2012, April 27, 2012, May 19, 2012, July 7, 2012, July 21, 2012 and August 4,
13 2012, and has failed to received 26 hours of therapy in 26 weeks.

14 FOURTH CAUSE TO REVOKE PROBATION

15 (Failure to Enter an Alcohol and Drug Treatment Program)

16 16. At all times after the effective date of respondent's probation in Case No. 1F-2010-
17 205772, Condition 5 stated:

18 "5. ALCOHOL AND DRUG ABUSE TREATMENT PROGRAM

19 Effective 30 days from the date of this Decision, respondent shall enter an
20 inpatient or outpatient alcohol or other drug abuse recovery program (a minimum
21 of six (6) months duration) or an equivalent program as approved by the Board of
22 its designee. Respondent shall provide the Board or its designee with proof that
23 the approved program was successfully completed. Terminating the program
24 without permission or being expelled for cause shall constitute a violation of
25 probation by respondent. All costs associated with the program shall be paid by
26 respondent.

27 "However, if respondent has already attended such an inpatient or
28 outpatient alcohol or other drug abuse recovery program, as described above.

1 commencing with the current period of sobriety, respondent shall provide the
2 Board or its designee with proof that the program was successfully completed and
3 this shall suffice to comply with this term of probation.”

4 17. Respondent’s probation is further subject to revocation, separately and severally, for
5 each of his failures, because he failed to comply with Probation Condition 5, referenced above, in
6 that within 30 days of the effective date of the Decision and Order of March 17, 2012, and
7 thereafter, he failed to enter an inpatient or outpatient alcohol or other drug abuse recovery
8 program (a minimum of six (6) months duration) or an equivalent program or provide the Board
9 or its designee with proof that the program was successfully completed.

10 **FIFTH CAUSE TO REVOKE PROBATION**

11 **(Failure to Participate in On-Going Treatment For Alcohol and Drug Abuse)**

12 18. At all times after the effective date of respondent’s probation in Case No. 1F-2010-
13 205772, Condition 6 stated:

14 “6. ONGOING TREATMENT PROGRAM Respondent shall
15 participate in on-going treatment and/or out-patient treatment such as receiving
16 individual and/or group therapy from a psychologist trained in alcohol and drug
17 abuse treatment; and/or attend Twelve Step meetings or the equivalent as approved
18 by the Board or its designee at least once a week during the first year of probation.
19 Respondent shall provide documentation of attendance at Twelve Step meetings or
20 the equivalent on a quarterly basis to the Board or its designee. All expenses
21 associated with the treatment shall be paid by respondent.”

22 19. Respondent’s probation is further subject to revocation, separately and severally, for
23 each of his failures, because he failed to comply with Probation Condition 6, referenced above, in
24 that he failed to participate in on-going treatment and/or out-patient treatment such as receiving
25 individual and/or group therapy from a psychologist trained in alcohol and drug abuse treatment;
26 and/or attend twelve step meetings or the equivalent at least once a week during the first year of
27 probation. The facts and circumstances regarding these violations are as follows:

28 ///

1 EIGHTH CAUSE TO REVOKE PROBATION

2 (Investigation and Cost Recovery Payment)

3 26. At all times after the effective date of respondent's probation in Case No. 1F-2010-
4 205772, Condition 10 stated:

5 "10. Respondent shall pay the Board its costs of investigation and
6 enforcement in the amount of \$15,000.00 with payment to begin within 60 days of
7 the effective date of this Decision, to be due and payable on the 5th day of each
8 month, and to be fully paid no later than 90 days prior to completion of the five (5)
9 year probation period. Such costs shall be payable to the Board of Psychology and
10 are to be paid regardless of whether the probation is tolled. Failure to pay such
11 costs shall be considered a violation of probation.

12 "The filing of bankruptcy by respondent shall not relieve respondent of the
13 responsibility to repay investigation and enforcement costs."

14 27. Respondent's probation is further subject to revocation, separately and severally, for
15 each of his failures, because he failed to comply with Probation Condition 10, referenced above,
16 in that he failed to pay the full amount of the investigation and enforcement costs. The facts and
17 circumstances regarding these violations are as follows:

18 28. Respondent stipulated and agreed to repay the Board \$15,000 for its costs of
19 investigation and enforcement, with payments to begin within 60 days of the effective date of the
20 March 17, 2012, Decision and Order, on a payment plan that required payment of \$265.15, per
21 month, over the term of his probation, due on the 5th day of each month. To date, respondent
22 submitted payments on April 11, 2012 and July 20, 2012, and has submitted no further payments,
23 leaving \$14,469.70, unpaid, due and owing to the Board.

24 NINTH CAUSE TO REVOKE PROBATION

25 (Failure to Submit Quarterly Reports)

26 29. At all times after the effective date of respondent's probation in Case No. 1F-2010-
27 205772, Condition 13 stated:

28 ///

PRAYER

WHEREFORE. Complainant requests that a hearing be held on the matters herein alleged. and that following the hearing, the Board of Psychology issue a decision:

1. Revoking the probation that was granted by the Board of Psychology in Case No. 1F-2010-205772 and imposing the disciplinary order that was stayed, thereby revoking Psychologist License No. PSY 11131 issued to Respondent Robert Edward Brizendine, Ph.D.;

2. Ordering Respondent Robert Edward Brizendine, Ph.D. to pay the Board of Psychology the reasonable costs of the investigation and enforcement of this Accusation and Petition to Revoke Probation, Case No. 1F-2012-227531;

3. Ordering Respondent Robert Edward Brizendine, Ph.D. to pay the Board of Psychology the sum of \$14,469.70 due in Case No. 1F-2010-205772; and

4. Taking such other and further action as deemed necessary and proper.

DATED: January 23, 2013


ROBERT I. KAHANE, J.D.
Executive Officer
Board of Psychology
Department of Consumer Affairs
State of California
Complainant

SD2012704627
70666966.doc