
BEFORE THE MISSISSIPPI AUTISM BOARD

IN THE MATTER OF:
MELANIE DALE

CAUSE NO. 20213

Respondent

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

1. The Mississippi Autism Board (hereinafter “Board”) is a duly constituted authority existing within the executive branch of the government of the State of Mississippi and is charged with licensure and regulation of behavior analysts in Mississippi, pursuant to Mississippi Code Section 73-75-1, *et seq.* The Board also *registers* those persons who are certified by the Behavior Analyst Certification Board (“BACB,” a national body distinct from this Board) as Registered Behavior Technicians (RBTs), which persons practice under the supervision and direction of a licensed behavior analyst. See Miss. Code Section 73-75-5.

2. Respondent, Melanie Dale, is a Licensed Behavior Analyst holding license number 170037 issued by the Board. This license was initially issued on or about October 23, 2017 and is set to expire on October 21, 2023. During the times and dates that are the subject of these proceedings, Respondent had several RBTs on her staff practicing under her supervision. A Licensed Behavior Analyst is required to provide supervision to RBTs by the statutes and rules governing Licensed Behavior Analysts.

In addition, a Licensed Behavior Analyst may also provide supervision to individuals who are pursuing a Master's degree in Behavior Analysis as part of a contractual agreement between the individual and the Licensed Behavior Analyst under these same statutes and rules governing Licensed Behavior Analysts.

3. On or about April 11, 2022, the Board issued against Respondent a Notice of Summary Suspension and Notice of Hearing and Complaint, setting out certain facts and violations alleged to have been committed by Respondent in her practice as a Licensed Behavior Analyst. (Respondent successfully sought injunctive relief in Forrest County Chancery Court against the Board for the summary suspension and therefore was permitted to continue to practice pending the outcome of the Hearing.)

4. The Complaint alleged five (5) separate allegations against Respondent, one (1) of which was dismissed at the beginning of the Hearing (Allegation No. 4 regarding billing). Therefore, the Hearing addressed the remaining four (4) allegations, which will be more fully set out below.

5. The Hearing was held on May 20, 2022, in Jackson, Hinds County, Mississippi, before the Board with Attorney Ellen O'Neal acting as Hearing Officer. Representing the Board as Complaint Counsel was Attorney Alexis Morris. Respondent was represented by Attorney Chase Wynn. A court reporter was present, and witnesses were sworn. The investigating Board member Dr. Sheila Williamson testified as the Board's expert and did not participate in the deliberations. A quorum of the Board was present. Other witnesses were also called to testify by both parties.

6. At the conclusion of the Hearing, the Board went into executive session to deliberate.

7. During executive session, the Board made certain findings and voted to take certain action against Respondent, regarding the following allegations, *to-wit*:

Allegation No. 1

On or about September 23, 2021, Respondent inappropriately restrained Child 1, a 5-year-old male, by misusing the restraint known as the “CPI Hold,” wrapping her arms around the child and sitting, physically and totally restricting any movement by the child for at least 15 minutes, when the child was neither a danger to himself or others, and when there was no restraint protocol in place. Child 1 was verbal and not being aggressive toward himself or others at the time of the restraint. This conduct is in violation of Mississippi Autism Board Rules (hereinafter “Board Rules”) 7.1(A) and (F).

Allegation No. 2

In October 2021, Respondent chose not to provide supervision to “Registered Behavior Technicians” (RBT’s) on her staff in breach of contract. Respondent forged supervision hours. This conduct violates Board Rule 7.1(B).

Allegation No. 3

Respondent was practicing outside her scope of competence in her treatment of Child 2 by not providing adequate functional assessment, intervention development, or staff training for the RBT’s on her staff who were providing services to Child 2. This conduct violates Board Rule 7.1(F).

Allegation No. 4

Respondent’s conduct alleged in the above allegations also violated Board Rules 7.1(R)*and (T). (*Board Rule 7.1(R) references other current codes of behavior which are adopted by the Board, outside of the Rules. Accordingly, also applicable to these proceedings is the Professional and Ethical Compliance Code for Behavior Analysts (“PECCBA”) previously adopted by this Board.)

FINDINGS OF FACT

8. As to Allegation No.1, the Board finds by clear and convincing evidence:

A. That Child 1 was a 5-year-old verbal male who, at the time of the incident, was highly distraught and crying, but who was not demonstrating an immediate threat of injury to himself or others;

B. That Respondent improperly physically restrained Child 1 with her arms and legs for at least 15 minutes and up to 22 minutes;

C. That Respondent did so after first taking Child 1 into a private room where no other children were present and where there existed no risk of injury by the Child to himself or to others, as such risk is defined by the clinic's own protocol, which was introduced into evidence;

D. That any acceptable and recognized protocol would have dictated immediate release of the child once the child was safe in a room with no danger of injury to himself or others;

E. That best practice recognized in the profession would have been an individualized treatment and response plan for Child 1 which addressed any reported behaviors such as elopement and physical aggression, none of which had been documented by Respondent in Child 1's records;

F. That Respondent did not disclose the restraint to the Child's parents after this incident;

G. That Respondent did not comply with her own facility's policy which requires 1) a Treatment Plan signed by a parent ahead of time which consents to the use of restraints, and 2) completion of a Restraint Incident Report after a restraint is used;

H. That the type of physical restraint the Respondent used was labeled by her as a "CPI" restraint (a type of physical management procedure taught and trademarked by the Crisis Prevention Institute) by the Respondent; however, the restraint used by Respondent on Child 1 did not follow CPI guidelines. Furthermore, while Respondent reported and testified to having been trained in the CPI procedures prior to 2020, no documentation of such training was provided, nor could a specific date be provided by the Respondent or her previous employer. In any event, she admitted in her testimony that she had not received the annual renewal training as outlined by the CPI guidelines.

9. As to Allegation No. 2, while the Board, based upon the evidence presented, believes Respondent likely did not provide adequate supervision of the RBT's on her staff in October 2021. However, the Board finds a lack of clear and convincing evidence that such is the case.

10. As to Allegation No. 3, the Board finds by clear and convincing evidence:

A. That in July 2021, Respondent attempted to implement a new method of assessment (Practical Functional Analysis (PFA)) and intervention (Skills Based Treatment (SBT)) with training received from FTF Consulting Group for Child #2.

Respondent completed the ten (10) hour coursework but failed to seek further consultation and supervision when it became apparent that it was needed. Respondent also failed to provide appropriate supervision and/or consultation of RBTs in implementing this method;

B. That data provided by the Respondent clearly demonstrated that Child #2's behavior only became worse and did not improve, and in fact, according to more than one witness, Child #2 was simply allowed to wander freely about the clinic with no evidence of clinical treatment or modifications to the treatment plan as needed for several months;

C. That, according to testimony from the investigating Board member, Respondent did not conduct the PFA as designed. The PFA incorporates two components: (1) a "synthesized interview" and (2) an assessment with a client presenting two environmental conditions (Happy Relaxed, Engaged (HRE) and Establishing Operation (EO)). Respondent reported that she only conducted the interview portion of the PFA, thus was not able to identify the "function(s) of behavior" – i.e., the reasons for the child's behavior patterns – necessary to develop an appropriate treatment (SBT) or intervention plan;

D. That Respondent failed to adequately train other staff (RBTs, who work directly with the child) in this new method, but rather merely provided the paperwork to them without training;

E. That, therefore, Respondent's treatment of Child 2 was entirely unacceptable and the method she was attempting to use was outside her scope of training and competence and outside the scope of training and competence of the RBTs practicing under her.

CONCLUSIONS OF LAW

11. Respondent's conduct regarding Child 1 as alleged in Allegation No. 1 is a violation of:

Board Rule 7.1(A). Negligence in the practice or performance of professional services or activities; and,

Board Rule 7.1(F) Engaging in or permitting the performance of unacceptable services personally or by others working under the licensee's supervision due to the licensee's deliberate or negligent act or acts or failure to act, regardless of whether actual damage to the public is established.

PECCBA 4.03 Individualized Behavior-Change Programs. (a) Behavior analysts must tailor behavior-change programs to the unique behaviors, environment variables, assessment results, and goals for each client.

PECCBA 4.08 Considerations Regarding Punishment Procedures. (a) Behavior Analysts recommend reinforcement rather than punishment whenever possible. (b) If punishment procedures are necessary, behavior analysts always include reinforcement procedures for alternative behavior in the behavior-change program (c) Before implementing punishment-based procedures, behavior analysts ensure that appropriate steps have been taken to implement reinforcement-based procedures unless the severity or dangerousness of the behavior necessitates immediate use of aversive procedures. (d) Behavior analysts ensure that aversive procedures are accompanied by an increased level of training, supervision, and oversight. Behavior analysts must evaluate the effectiveness of aversive procedures in a timely manner and modify the behavior-change program if it is ineffective. Behavior analysts always include a plan to discontinue the use of aversive procedures when no longer needed.

PECCBA 4.09 Least Restrictive Procedures. Behavior analysts review and appraise the restrictiveness of procedures and always recommend the least restrictive procedures likely to be effective.

12. Respondent's conduct as alleged in Allegation No. 3 regarding Child 2 is a violation of:

Board Rule 7.1 (A) and Board Rule 7.1(F) as set out above.

PECCBA 1.02 Boundaries of Competence. (a) All behavior analysts provide services, teach, and conduct research only within the boundaries of competence, defined as being commensurate with their education, training, and supervised experience. (b) Behavior analysts provide services, teach, or conduct research in new areas (e.g., populations, techniques, behaviors) only after first undertaking appropriate study, training, supervision, and/or consultation from persons who are competent in those areas.

PECCBA 2.09 Treatment/Intervention Efficacy. (a) Clients have a right to effective treatment (i.e., based on the research literature and adapted to the individual client). Behavior analysts always have the obligation to advocate for and educate the client about scientifically supported, most effective treatment procedures. Effective treatment procedures have been validated as having both a long-term and short-term benefits to clients and society.

PECCBA 3.03 Behavior-Analytic Assessment Consent. (a) Prior to conducting an assessment, behavior analysts must explain to the client the procedure(s) to be used, who will participate, and how the resulting information will be used. (b) Behavior analysts must obtain the client's written approval of the assessment procedures before implementing them.

PECCBA 5.03 Supervisory Delegation. (a) Behavior analysts delegate to their supervisees only those responsibilities that such persons can reasonably be expected to perform competently, ethically, and safely. b) If the supervisee does not have the skills necessary to perform competently, ethically, and safely, behavior analysts provide conditions for the acquisition of those skills.

ORDER OF THE BOARD

NOW THEREFORE, the Board issues the following Order:

1. Respondent's license shall be and is hereby suspended for a period of one (1) year from the date of this Order.
2. The suspension is stayed pending completion of the following Conditions within one (1) year of the date of this Order:
 - A. Respondent shall continue working under the direct supervision of a licensed supervisor who maintains a BCBA-D credential and is a Mississippi Licensed Behavior Analyst (LBA). This individual cannot work for Ms. Dale or within her company and must be an outside supervisor, someone who has not previously supervised her experience, and who has been approved by the MAB. Ms. Dale has a two-month window (60 days) to provide the name of her supervisor to the MAB for approval. Until supervisor is approved, Ms. Dale is not to practice and shall remain under suspension.
 - B. Respondent shall maintain a small caseload not to exceed three clients during this time;
 - C. For each client, Respondent shall submit to the board a monthly report demonstrating the following criteria: Presenting concerns of the client, decision of personal professional competency to take the case and to meet the client's needs, assessment plans, treatment plans and behavior-change

protocols, demonstration of knowledge of how to teach the treatment plan to others (RBTs or BCBA's) and ethical framework for problem solving crisis concerns should they arise. Each of these criteria should be discussed directly with Respondent's supervisor so as to plan and make necessary adjustments to align with the Rules and Regulations of the MAB, the Ethics Code of Behavior Analysts, and best practice for the field of behavior analysis. Each monthly report will be due by 25th of each month to the MAB.

D. Respondent shall pass a board provided evaluation completed by the supervising LBA/BCBA-D each three-months with a score of 3 or higher with a final supervisor evaluation of a score of 4 or higher.

E. Respondent shall not supervise any RBTs during the year of suspension.

F. Respondent shall pay to the Board within 90 days from this Order all costs of investigation, prosecution, and adjudication of this disciplinary action, pursuant to Miss. Code Section 73-75-19.

3. Upon Respondent's failure to comply with the Conditions described in paragraphs II.A through II.E above within one (1) year from the date of this Order, and/or failure to pay costs as set out in paragraph II.F above within 90 days, the Board may immediately lift the stay and Respondent's license will be immediately suspended; for one (1) full year from the date the stay of suspension is lifted;

4. After one (1) year from the date of this Order, if Respondent has complied with all Conditions outlined above, and is otherwise in good standing with the Board,

Respondent may petition the Board in writing to lift the suspension and fully restore her license.

5. This Order of the Board is appealable as allowed by law.

SO ORDERED THIS THE 7th day of July 2022.

THE MISSISSIPPI AUTISM BOARD

For the Board: 
PRESIDENT OF THE BOARD