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7 **BEFORE THE**  
8 **BOARD OF BEHAVIORAL SCIENCES**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. MF-2010-27

12 **MICHAEL JOHN RUBINO, III**  
13 **101 Gregory Ln., #33**  
14 **Pleasant Hill, CA 94523**

**FIRST AMENDED ACCUSATION**

15 **Marriage and Family Therapist License No.**  
**MFC 33900**

Respondent.

16 Complainant alleges:

17 **PARTIES**

- 18 1. Kim Madsen (Complainant) brings this Accusation solely in her official capacity as  
19 the Executive Officer of the Board of Behavioral Sciences, Department of Consumer Affairs.  
20 2. On or about May 15, 1997, the Board of Behavioral Sciences issued Marriage and  
21 Family Therapist License Number MFC 33900 to Michael John Rubino, III (Respondent). The  
22 Marriage and Family Therapist License was in full force and effect at all times relevant to the  
23 charges brought herein and will expire on July 31, 2014, unless renewed.

24 **JURISDICTION**

- 25 3. This Accusation is brought before the Board of Behavioral Sciences (Board),  
26 Department of Consumer Affairs, under the authority of the following laws. All section  
27 references are to the Business and Professions Code unless otherwise indicated.  
28 4. Section **118**, subdivision (b), of the Code provides that the expiration of a license

1 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period  
2 within which the license may be renewed, restored, reissued or reinstated.

3 **STATUTORY AND REGULATORY PROVISIONS**

4 5. Section 651 of the Code states, in pertinent part:

5 (a) It is unlawful for any person licensed under this division or under any initiative act  
6 referred to in this division to disseminate or cause to be disseminated any form of public  
7 communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image  
8 for the purpose of or likely to induce, directly or indirectly, the rendering of professional services  
9 or furnishing of products in connection with the professional practice or business for which he or  
10 she is licensed. A "public communication" as used in this section includes, but is not limited to,  
11 communication by means of mail, television, radio, motion picture, newspaper, book, list or  
12 directory of healing arts practitioners, Internet, or other electronic communication.

13 (b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a  
14 statement or claim that does any of the following:

15 (1) Contains a misrepresentation of fact.

16 (2) Is likely to mislead or deceive because of a failure to disclose material facts.

17 (3)(A) Is intended or is likely to create false or unjustified expectations of favorable results,  
18 including the use of any photograph or other image that does not accurately depict the results of  
19 the procedure being advertised or that has been altered in any manner from the image of the  
20 actual subject depicted in the photograph or image.

21 (B) Use of any photograph or other image of a model without clearly stating in a prominent  
22 location in easily readable type the fact that the photograph or image is of a model is a violation  
23 of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient,  
24 who has undergone the procedure being advertised, of the licensee who is advertising for his or  
25 her services.

26 (C) Use of any photograph or other image of an actual patient that depicts or purports to  
27 depict the results of any procedure, or presents "before" and "after" views of a patient, without  
28 specifying in a prominent location in easily readable type size what procedures were performed

1 on that patient is a violation of subdivision (a). Any “before” and “after” views (i) shall be  
2 comparable in presentation so that the results are not distorted by favorable poses, lighting, or  
3 other features of presentation, and (ii) shall contain a statement that the same “before” and “after”  
4 results may not occur for all patients.

5 (4) Relates to fees, other than a standard consultation fee or a range of fees for specific  
6 types of services, without fully and specifically disclosing all variables and other material factors.

7 (5) Contains other representations or implications that in reasonable probability will cause  
8 an ordinarily prudent person to misunderstand or be deceived.

9 (6) Makes a claim either of professional superiority or of performing services in a superior  
10 manner, unless that claim is relevant to the service being performed and can be substantiated with  
11 objective scientific evidence.

12 (7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed,  
13 published scientific studies.

14 (8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive  
15 because of a failure to disclose material facts.

16 . . .

17 (e) Any person so licensed may not use any professional card, professional announcement  
18 card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or  
19 a similar professional notice or device if it includes a statement or claim that is false, fraudulent,  
20 misleading, or deceptive within the meaning of subdivision (b).

21 . . .

22 (g) Any violation of this section by a person so licensed shall constitute good cause for  
23 revocation or suspension of his or her license or other disciplinary action.

24 (h) Advertising by any person so licensed may include the following:

25 (1) A statement of the name of the practitioner.

26 (2) A statement of addresses and telephone numbers of the offices maintained by the  
27 practitioner.

28 (3) A statement of office hours regularly maintained by the practitioner.

1 (4) A statement of languages, other than English, fluently spoken by the practitioner or a  
2 person in the practitioner's office.

3 (5)(A) A statement that the practitioner is certified by a private or public board or agency or  
4 a statement that the practitioner limits his or her practice to specific fields.

5 . . .

6 6. Section **2902(c)** of the Code states:

7 A person represents himself or herself to be a psychologist when the person holds himself  
8 or herself out to the public by any title or description of services incorporating the words  
9 “psychology,” “psychological,” “psychologist,” “psychology consultation,” “psychology  
10 consultant,” “psychometry,” “psychometrics” or “psychometrist,” “psychotherapy,”  
11 “psychotherapist,” “psychoanalysis,” or “psychoanalyst,” or when the person holds himself or  
12 herself out to be trained, experienced, or an expert in the field of psychology.

13 7. Section **2903** of the Code states:

14 No person may engage in the practice of psychology, or represent himself or herself to be a  
15 psychologist, without a license granted under this chapter, except as otherwise provided in this  
16 chapter. The practice of psychology is defined as rendering or offering to render for a fee to  
17 individuals, groups, organizations or the public any psychological service involving the  
18 application of psychological principles, methods, and procedures of understanding, predicting,  
19 and influencing behavior, such as the principles pertaining to learning, perception, motivation,  
20 emotions, and interpersonal relationships; and the methods and procedures of interviewing,  
21 counseling, psychotherapy, behavior modification, and hypnosis; and of constructing,  
22 administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality  
23 characteristics, emotions, and motivations.

24 The application of these principles and methods includes, but is not restricted to: diagnosis,  
25 prevention, treatment, and amelioration of psychological problems and emotional and mental  
26 disorders of individuals and groups.

27 Psychotherapy within the meaning of this chapter means the use of psychological methods  
28 in a professional relationship to assist a person or persons to acquire greater human effectiveness

1 or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually, or  
2 socially ineffectual or maladjustive.

3 8. Section 4982 of the Code states, in pertinent part:

4 The board may deny a license or registration or may suspend or revoke the license or  
5 registration of a licensee or registrant if he or she has been guilty of unprofessional conduct.

6 Unprofessional conduct includes, but is not limited to, the following:

7 . . .

8 (d) Gross negligence or incompetence in the performance of marriage and family therapy.

9 . . .

10 (f) Misrepresentation as to the type or status of a license or registration held by the person,  
11 or otherwise misrepresenting or permitting misrepresentation of his or her education, professional  
12 qualifications, or professional affiliations to any person or entity.

13 . . .

14 (h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered  
15 person to engage in conduct for which a license or registration is required under this chapter.

16 (i) Intentionally or recklessly causing physical or emotional harm to any client.

17 (j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the  
18 qualifications, functions, or duties of a licensee or registrant.

19 . . .

20 (m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of  
21 all information that has been received from a client in confidence during the course of treatment  
22 and all information about the client that is obtained from tests or other means.

23 . . .

24 (p) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in  
25 Section 651.

26 . . .

27 **COSTS**

28 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the

1 administrative law judge to direct a licentiate found to have committed a violation or violations of  
2 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
3 enforcement of the case.

4 **Improper Employment Of Unlicensed Person**

5 10. From in or about 2005 until in or about November, 2008, in Pittsburg, California,  
6 Respondent employed, and purported to supervise, Tajinder Bedi as a marriage and family  
7 therapist intern. Mr. Bedi was not licensed as a marriage and family therapist intern during this  
8 period.

9 11. The Board learned of the facts set forth in paragraph 11 on or about July 9, 2009,  
10 when these facts were reported in a letter from Contra Costa Health Services.

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Employment of Unlicensed Person)

13 12. Respondent is subject to disciplinary action under Code section 4982(h) in that he  
14 aided and abetted, and/or employed, Tajinder Bedi, an unlicensed and unregistered person, to  
15 engage in conduct for which a license or registration is required, as set forth above in paragraph  
16 10.

17 **False Advertising**

18 13. On or about October, 2009, Respondent advertised his services on a website. The  
19 website identified and referred to Respondent as "Dr. Michael Rubino III" and stated that  
20 Respondent was a psychologist. This advertisement was false, fraudulent and misleading in that,  
21 in actuality, Respondent was not licensed as a psychologist and could not legally claim to be one  
22 in his advertisement.

23 14. The Board learned of the facts set forth in paragraph 14 on or about July 9, 2009,  
24 when these facts were reported in a letter from Contra Costa Health Services.

25 **SECOND CAUSE FOR DISCIPLINE**

26 (False Advertising)

27 15. Respondent is subject to disciplinary action under Code sections 651, subsection (g),  
28 and under Code section 4982, subsections (f), (j) and (p), in that he misrepresented his education,

1 professional qualifications and/or professional affiliations, which misrepresentation constituted a  
2 dishonest, corrupt or fraudulent act substantially related to the qualifications, functions, or duties  
3 of a licensee, and which misrepresentation was misleading or deceptive, as set forth above in  
4 paragraph 13.

5 **Patient T.C.**

6 16. Respondent provided therapy services to patient T.C.,<sup>1</sup> a 15 or 16-year-old boy, from  
7 October, 2010, until October, 2011. Patient T.C. attended individual and group therapy sessions  
8 with Respondent.

9 17. In or about August, 2011, Respondent gave patient T.C. an iPod device. Patient T.C.  
10 had previously asked his parents for an iPod, but they had refused to buy him one because of  
11 patient T.C.'s poor grades. Respondent was aware of this. Respondent told patient T.C. not to  
12 tell his parents about the gift. Respondent paid the monthly service charges for the device. He  
13 provided a user name and password to patient T.C. so that patient T.C. could access all of the  
14 device's applications. The device could be used as a telephone and was enabled to send and  
15 receive text messages and e-mails. Respondent communicated with patient T.C. via this device,  
16 rather than via patient T.C.'s parents' home telephone.

17 18. The iPod which Respondent gave to patient T.C. contained sexually explicit text  
18 and/or e-mail messages between Respondent and another person. The messages referred to oral  
19 sex between Respondent and the other person. Patient T.C. found the messages disturbing.

20 19. The iPod which Respondent gave to patient T.C. also contained 491 contacts,  
21 including, but not limited to, the names, telephone numbers and birth dates of Respondent's  
22 therapy clients.

23 20. On or about October and November, 2011, Respondent held group therapy sessions  
24 for mixed groups of boys and girls. Respondent had patient T.C. attend these sessions, without  
25 notifying patient T.C.'s parents. Respondent had previously told patient T.C.'s parents that all  
26 group sessions would be for boys only. Also in attendance at these sessions was patient T.C.'s

27 \_\_\_\_\_  
28 <sup>1</sup> The name of patient T.C. is withheld to protect patient confidentiality.

1 girlfriend. Respondent was aware that patient T.C.'s parents did not approve of patient T.C.  
2 dating at that time.

3 21. During Respondent's therapeutic relationship with patient T.C., Respondent made  
4 comments on patient T.C.'s Facebook page. One such comment, on or about August 1, 2011,  
5 referring to a photo of patient T.C. kissing his girlfriend, stated: "They make a cute couple." A  
6 few days later, Respondent again commented, stating: "They still make a cute couple."

7 22. Patient T.C. feels that Respondent's acts, described above, undermined the authority  
8 of patient T.C.'s parents. He feels that Respondent damaged his relationship with his parents. As  
9 a result of the above-described conduct, patient T.C. experienced emotional trauma/harm.

10 23. During the course of therapy, Respondent contacted patient T.C.'s sister and asked  
11 her to talk about patient T.C. Neither patient T.C. nor his parents had approved of such contact.

12 **THIRD CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct)

14 24. Respondent is subject to disciplinary action under Code 4982 in that he acted  
15 unprofessionally, as set forth above in paragraphs 16-23.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 (Gross Negligence/Incompetence)

18 25. Respondent is subject to disciplinary action under Code 4982, subsection (d), in that  
19 he acted with gross negligence and/or incompetence in the performance of marriage and family  
20 therapy, as set forth above in paragraphs 16-23.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 (Violation of Patient Confidentiality)

23 26. Respondent is subject to disciplinary action under Code 4982, subsection (m), in that  
24 he failed to maintain patient confidentiality, as set forth above in paragraphs 16-23.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 (Causing Harm to Client)

27 27. Respondent is subject to disciplinary action under Code 4982, subsection (i), in that  
28 he intentionally or recklessly caused emotional harm to patient T.C., as set forth above in

1 paragraphs 16-23.

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**PRAYER**

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

1. Revoking or suspending Marriage and Family Therapist License Number MFC 33900, issued to Michael John Rubino, III;
2. Ordering Michael John Rubino, III to pay the Board of Behavioral Sciences the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: August 28, 2012

  
KIM MADSEN  
Executive Officer  
Board of Behavioral Sciences  
Department of Consumer Affairs  
State of California  
*Complainant*