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BEFORE THE
BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: PAUL GORDON WHITMORE, MFC 6145 Decena Drive San Diego, CA 92120 Marriage and Family Therapy License No. MFC 25944 Respondent.	Case No. MF-2002-523 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 28, 2008, Complainant Paul Riches, in his official capacity as the Executive Officer of the Board of Behavioral Sciences, Department of Consumer Affairs, filed Accusation No. MF-2002-523 against Paul Gordon Whitmore, MFC (Respondent) before the Board of Behavioral Sciences.

2. On or about January 12, 1990, the Board of Behavioral Sciences (Board) issued Marriage and Family Therapy License No. MFC 25944 to Respondent. The Marriage and Family Therapy License expired on December 31, 2003, and has not been renewed.

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3. On or about September 10, 2008, Joanne S. Millot, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. MF-2002-523, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: 6145 Decena Drive, San Diego, CA 92120. A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. On or about September 12, 2008, the aforementioned documents were returned by the former employer of the Respondent with the representation that he was no longer at his address of record.

6. Business and Professions Code section 118 states, in pertinent part:

> (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the license on any such ground.

7. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

8. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. MF-2002-523.

9. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

10. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the evidence on file herein, finds that the allegations in Accusation No. MF-2002-523 are true.

11. The total cost for investigation and enforcement in connection with the Accusation are $5,445.75 as of November 4, 2008.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Paul Gordon Whitmore, MFC has subjected his Marriage and Family Therapy License No. MFC 25944 to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Behavioral Sciences is authorized to revoke Respondent's Marriage and Family Therapy License based upon the following violations alleged in the Accusation:

a. Business & Professions Code sections 490 and 4982(a), Criminal Conviction for Multiple Acts of Aggravated Sexual Assault of a Child, Lewd Acts Upon a Child, Posing Minors for Pictures Involving Sexual Conduct and Child Molest.

ORDER

IT IS SO ORDERED that Marriage and Family Therapy License No. MFC 25944, heretofore issued to Respondent Paul Gordon Whitmore, MFC, is revoked.

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on December 18, 2008.

It is so ORDERED November 18, 2008

FOR THE BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS

80303797.wpd
DOJ docket number:SD2006800968

Attachment:

Exhibit A: Accusation No. MF-2002-523

Exhibit A

Accusation No. MF-2002-523

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BEFORE THE
BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: PAUL GORDON WHITMORE 6145 Decena Drive San Diego, CA 92120 Marriage & Family Therapist License No. MFC 25944 Respondent.	Case No. MF-2002-523 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Paul Riches (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Board of Behavioral Sciences, Department of Consumer Affairs.

2. On or about January 12, 1990, the Board of Behavioral Sciences issued Marriage and Family Therapist License Number MFC 25944 to PAUL GORDON WHITMORE (Respondent). The Marriage and Family Therapist License expired on December 31, 2003, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Behavioral Sciences (Board), Department of Consumer Affairs under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4982 states:

> The board may refuse to issue any registration or license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:
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> (a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.
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> . . . .

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 490 of the Code states:

> (a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
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> (b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially

related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

. . . .

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

8. California Code of Regulations, title 16, section 1812 states:

For purposes of denial, suspension, or revocation of a license or registration pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license under Chapter 17 of Division 3 and Chapter 4 of Part 3 of Division 7 of the Code if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by his or her license in a manner consistent with the public health, safety or welfare.

9. California Code of Regulations, title 16, section 1814 states:

(a) When considering the suspension or revocation of a license, the board, in evaluating the rehabilitation of such person and his or her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.

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(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation under Section 490 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) giving rise to the suspension or revocation.

(4) Whether the licensee has complied with any terms of probation, parole, restitution or any other sanctions lawfully imposed against such person.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent or immaterial.

(7) Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.

(8) Evidence, if any, of rehabilitation submitted by the licensee.

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(November 30, 2005 Criminal Conviction for Multiple Acts of Aggravated Sexual Assault of a Child, Lewd Acts Upon a Child, Posing Minors for Pictures Involving Sexual Conduct, Child Molest)

11. Respondent is subject to disciplinary action under sections 490 and 4982, subdivision (a) in that Respondent was convicted of crimes that are substantially related to the qualifications, functions, and duties of a marriage and family therapist. The circumstances are as follows:

a. On or about November 30, 2005, in a criminal proceeding entitled *People of the State of California v. Paul G. Whitmore,* in San Diego County Superior Court, case number SCD165314, Respondent was convicted by a jury of violating Penal Code section 288, subdivision (a), lewd acts upon a child; Penal Code section 269, aggravated sexual assaults of a child; Penal Code section 311.4, subdivision (b), posing minors for pictures involving sexual

conduct; Penal Code section 288.2, subdivision (b), harmful matter sent to minors via electronic means; Penal Code section 647.6, subdivision (a), child molest; and Penal Code section 136.1, subdivision (b)(1), attempting to dissuade a witness from reporting a crime. The violations were further enhanced in that some offenses involved binding the victim(s) and were committed against more than one victim, as described in Penal Code section 667.61, subdivision (a)(c)(e).

b. As a result of the conviction, on or about February 9, 2006, Respondent was sentenced to serve an aggregate determinate sentence of 42 years, 8 months on 24 counts, followed by a consecutive, indeterminate sentence of 425 years to life in state prison on the remaining 26 counts. Respondent was further ordered to pay restitution to his many victims.

c. Respondent appealed the conviction. On or about May 8, 2008, in the matter of *People v. Paul Gordon Whitmore,* California Court of Appeal, Fourth Appellate District, Division One, case number D048294, the appellate court affirmed the lower court's judgment. A Remittitur was issued on or about August 18, 2008, adopting the appellate court's decision as final.

d. The circumstances that led to the conviction were that on or about November 2001, police in Stockholm, Sweden were notified of an Internet news group that was posting photographs of child pornography. The Stockholm police notified the National Danish Police which resulted in the arrest of a couple in Denmark ("Jensen"). During a search of Jensen's residence, the police seized their computer. A forensics examination of the computer revealed it was using a File Transfer Protocol (FTP) program. An FTP uses computer software that permits the easy exchange of digital information between computers. The Jensen's FTP log files showed activity between the Jensen's computer and an Internet Protocol (IP) address that was traced to Respondent. (An IP address is the standard way of identifying a computer that is connected to the Internet, much the way a telephone number identifies a telephone.) The activity included the transfer and receipt of digital images of child pornography. Jensen's program identified Respondent as "Mat," a frequent (favorite) user of the news group. The investigation further revealed chat logs between Jensen and Respondent that included dialog about sexually

molesting children and trading photographs of the molestations. Also found during the search was an envelope addressed to Jensen with Respondent's return address in San Diego. According to the investigator, the Jensens were sexually molesting a nine-year-old girl and posting photos of the molest on the Internet. The Jensens were in contact with others who also traded photos of child molests. The Danish team identified suspects in Germany, England, the Netherlands, and two suspects in California, including Respondent. The Danish investigator made a referral of the case to the U.S. Customs in Berlin.

e. As a result of the referral, on or about January 18, 2002, the U.S. Customs office in Virginia served a summons on the Internet service provider for Respondent's IP address and obtained the subscriber's information, which led them to Respondent. As a result of the investigation, on or about the evening of January 27, 2002, a search warrant was served at the home of Respondent. Present during the service of the warrant were members of the San Diego County Sheriff's Department, San Diego Police Department, U.S. Postal Inspection Service, and U.S. Customs. Officers seized computers, storage media, VHS tapes, cameras, documents, ropes, leather restraining devices, photographs, books, and other items.

f. Of the materials seized from Respondent's residence, investigators found numerous photographs and videos depicting Respondent engaging in oral and anal sex with a minor female, who was either handcuffed or tied with ropes during the acts. There were additional photos of other young females posed to display their genitalia. The surroundings in the photos and videos were similar to the surroundings in Respondent's home. Chat logs between Respondent and Jensen contained dialogue about the sex they were having with minor females in bondage. Respondent told Jensen that he had hundreds of sexually explicit photographs of one girl, but he wiped his computer after her father accused him of molesting her. Investigators also uncovered a "contract" Respondent made with a co-conspirator (who was also convicted), outlining the specific sex acts he wanted to commit on the co-conspirator's victims, what sexual contact the co-conspirator was allowed to have with Respondent's victim, and how he wanted the children posed during nude photography sessions.

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g. In an e-mail to a co-conspirator, Respondent quoted the American Psychological Association as having taken the stand that "consensual sex" with a child does not harm the child. Respondent has maintained his innocence and has continually defended his position that sexual contact between children and adults is acceptable.

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 & Family Therapy License No. MFC 25944, issued to Paul Gordon Whitmore;

2. Ordering Paul Gordon Whitmore to pay the Board of Behavioral Sciences the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3 of the Code;

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

DATED: August 28, 2008

PAUL RICHES
Executive Officer
Board of Behavioral Sciences
Department of Consumer Affairs
State of California
Complainant

SD2006800968