

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

In the Matter of the Accusation Against,

ROSEMARY SMITH
2150 Garden Road, B-1
Monterey, CA 93940
Marriage and Family Therapist License No.
MFC 36030

MF-2008-1187

OAH No. 2009040657

Respondent.

DECISION AND ORDER

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

This Decision shall become effective on September 4, 2009.

It is so ORDERED August 5, 2009.

Renee B. Fournier

FOR THE BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
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Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against,

MF-2008-1187

12 **ROSEMARY SMITH**
2150 Garden Road, B-1
13 Monterey, CA 93940
Marriage and Family Therapist License No.
14 MFC 36030

OAH No. 2009040657

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Paul Riches (Complainant) is the Executive Officer of the Board of Behavioral
21 Sciences. He brought this action solely in his official capacity and is represented in this matter by
22 Edmund G. Brown Jr., Attorney General of the State of California, by Char Sachson, Deputy
23 Attorney General.

24 2. Respondent Rosemary Smith (Respondent) is representing herself in this proceeding
25 and has chosen not to exercise her right to be represented by counsel.

26 3. On or about June 28, 1999, the Board of Behavioral Sciences issued Marriage and
27 Family Therapist License No. MFC 36030 to Rosemary Smith (Respondent). The Marriage and
28

1 Family Therapist License was in full force and effect at all times relevant to the charges brought
2 in Accusation No. MF-2008-1187 and will expire on December 31, 2010, unless renewed.

3 JURISDICTION

4 4. Accusation No. MF-2008-1187 was filed before the Board of Behavioral Sciences
5 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 April 2, 2009. Respondent timely filed her Notice of Defense contesting the Accusation. A copy
8 of Accusation No. MF-2008-1187 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. MF-2008-1187. Respondent has also carefully read, and understands the effects
12 of this Stipulated Settlement and Disciplinary Order.

13 6. Respondent is fully aware of her legal rights in this matter, including the right to a
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
15 her own expense; the right to confront and cross-examine the witnesses against her; the right to
16 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
17 compel the attendance of witnesses and the production of documents; the right to reconsideration
18 and court review of an adverse decision; and all other rights accorded by the California
19 Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
21 every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. MF-2008-1187.

25 9. Respondent agrees that her Marriage and Family Therapist License is subject to
26 discipline and she agrees to be bound by the Board of Behavioral Sciences (Board)'s imposition
27 of discipline as set forth in the Disciplinary Order below.

28 ///

1 as are appointed by the Board. The cost of such evaluation shall be borne by Respondent. Failure
2 to pay for the report in a timely fashion constitutes a violation of probation.

3 Such evaluator shall furnish a written report to the Board or its designee regarding
4 Respondent's judgment and ability to function independently and safely as a counselor and such
5 other information as the Board may require. Respondent shall execute a Release of Information
6 authorizing the evaluator to release all information to the Board. Respondent shall comply with
7 the recommendations of the evaluator.

8 If Respondent is determined to be unable to practice independently and safely, upon
9 notification, Respondent shall immediately cease practice and shall not resume practice until
10 notified by the Board or its designee. Respondent shall not engage in any practice for which a
11 license issued by the Board is required, until the Board or its designee has notified the
12 Respondent of its determination that Respondent may resume practice.

13 2. **Psychotherapy.** Respondent shall participate in ongoing psychotherapy with a
14 California licensed mental health professional who has been approved by the Board. Counseling
15 shall be at least once a week unless otherwise determined by the Board. Respondent shall
16 continue in such therapy at the Board's discretion. Cost of such therapy is to be borne by
17 Respondent.

18 Within 60 days of the effective date of this decision, Respondent shall submit to the Board
19 or its designee for its prior approval the name and qualifications of one or more therapists of
20 Respondent's choice. Such therapist shall possess a valid California license to practice and shall
21 have had no prior business, professional, or personal relationship with Respondent, nor shall the
22 psychotherapist be the Respondent's supervisor. Respondent shall provide the therapist with a
23 copy of the Board's decision no later than the first counseling session. Upon approval by the
24 Board, Respondent shall undergo and continue treatment until the Board or its designee
25 determines that no further psychotherapy is necessary.

26 Respondent shall take all necessary steps to ensure that the treating psychotherapist submits
27 quarterly written reports to the Board concerning Respondent's fitness to practice, progress in
28 treatment, and to provide such other information as may be required by the Board. Respondent

1 shall execute a Release of Information authorizing the therapist to divulge information to the
2 Board.

3 If the treating psychotherapist finds that Respondent cannot practice safely or
4 independently, the psychotherapist shall notify the Board within three (3) working days. Upon
5 notification by the Board, Respondent shall immediately cease practice and shall not resume
6 practice until notified by the Board or its designee that Respondent may do so. Respondent shall
7 not thereafter engage in any practice for which a license issued by the Board is required until the
8 Board or its designee has notified Respondent that she may resume practice. Respondent shall
9 document compliance with this condition in the manner required by the Board.

10 3. **Supervised Practice.** Within 30 days of the effective date of this decision,
11 Respondent shall submit to the Board or its designee, for its prior approval, the name and
12 qualification of one or more proposed supervisors and a plan by each supervisor. The supervisor
13 shall be a current California licensed practitioner in Respondent's field of practice, who shall
14 submit written reports to the Board or its designee on a quarterly basis verifying that supervision
15 has taken place as required and including an evaluation of Respondent's performance. The
16 supervisor shall be independent, with no prior business, professional or personal relationship with
17 Respondent. Failure to file the required reports in a timely fashion shall be a violation of
18 probation. Respondent shall give the supervisor access to Respondent's fiscal and client records.

19 4. If the supervisor is no longer available, Respondent shall notify the Board within 15
20 days and shall not practice until a new supervisor has been approved by the Board. All costs of
21 the supervision shall be borne by Respondent. Supervision shall consist of at least one (1) hour
22 per week in individual face to face meetings. The supervisor shall not be the Respondent's
23 therapist.

24 5. **Reimbursement of Probation Program.** Respondent shall reimburse the Board for
25 the costs it incurs in monitoring the probation to ensure compliance for the duration of the
26 probation period, in the amount of \$1200.00 per year.

27 6. **Obey All Laws.** Respondent shall obey all federal, state and local laws, all statutes
28 and regulations governing the licensee, and remain in full compliance with any court ordered

1 criminal probation, payments and other orders. A full and detailed account of any and all
2 violations of law shall be reported by the Respondent to the Board or its designee in writing
3 within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term,
4 Respondent shall submit fingerprints through the Department of Justice and Federal Bureau of
5 Investigation within 30 days of the effective date of the decision, unless previously submitted as
6 part of the licensure application process. Respondent shall pay the cost associated with the
7 fingerprint process.

8 **7. File Quarterly Reports.** Respondent shall submit quarterly reports, to the Board or
9 its designee, as scheduled on the "Quarterly Report Form" (rev. 01/12/01). Respondent shall state
10 under penalty of perjury whether she has been in compliance with all the conditions of probation.
11 Notwithstanding any provision for tolling of requirements of probation, during the cessation of
12 practice Respondent shall continue to submit quarterly reports under penalty of perjury.

13 **8. Comply with Probation Program.** Respondent shall comply with the probation
14 program established by the Board and cooperate with representatives of the Board in its
15 monitoring and investigation of the Respondent's compliance with the program.

16 **9. Interviews with The Board.** Respondent shall appear in person for interviews with
17 the Board or its designee upon request at various intervals and with reasonable notice.

18 **10. Residing or Practicing Out of State.** In the event Respondent should leave the State
19 of California to reside or to practice, Respondent shall notify the Board or its designee in writing
20 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period
21 of time exceeding thirty calendar days in which respondent is not engaging in any activities
22 defined in Sections 4980.02, 4989.14 or 4996.9 of the Business and Professions Code.

23 All time spent in an intensive training program outside the State of California which has
24 been approved by the Board or its designee shall be considered as time spent in practice within
25 the State. A Board-ordered suspension of practice shall not be considered as a period of non-
26 practice. Periods of temporary or permanent residence or practice outside California will not
27 apply to the reduction of the probationary term. Periods of temporary or permanent residence or
28 practice outside California will relieve respondent of the responsibility to comply with the

1 probationary terms and conditions with the exception of this condition and the following terms
2 and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

3 Respondent's license shall be automatically cancelled if Respondent's periods of temporary
4 or permanent residence or practice outside California total two years. However, Respondent's
5 license shall not be cancelled as long as Respondent is residing and practicing in another state of
6 the United States and is on active probation with the licensing authority of that state, in which
7 case the two year period shall begin on the date probation is completed or terminated in that state.

8 **11. Failure to Practice-California Resident.** In the event Respondent resides in the
9 State of California and for any reason Respondent stops practicing in California, Respondent shall
10 notify the Board or its designee in writing within 30 calendar days prior to the dates of non-
11 practice and return to practice. Any period of non-practice within California, as defined in this
12 condition, will not apply to the reduction of the probationary term and does not relieve
13 Respondent of the responsibility to comply with the terms and conditions of probation. Non-
14 practice is defined as any period of time exceeding thirty calendar days in which Respondent is
15 not engaging in activities defined in sections 4980.02, 4989.14 or 4996.9 of the Business and
16 Professions Code.

17 **12. Change of Place of Employment or Place of Residence.** Respondent shall notify
18 the Board or its designee in writing within 30 days of any change of place of employment or
19 place of residence. The written notice shall include the address, the telephone number and the
20 date of the change.

21 **13. Supervision of Unlicensed Persons.** While on probation, Respondent shall not act
22 as a supervisor for any hours of supervised practice required for any license issued by the Board.
23 Respondent shall terminate any such supervisory relationship in existence on the effective date
24 of this Decision.

25 **14. Notification to Clients.** Respondent shall notify all clients of any term or condition
26 of probation which will affect their therapy or the confidentiality of their records. Such
27 notification shall be signed by each client prior to continuing or commencing treatment.
28 Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of

1 compliance with this term of probation.

2 **15. Notification to Employer.** Respondent shall provide each of her current or future
3 employers, when performing services that fall within the scope of her practice, a copy of this
4 Decision and the Accusation before commencing employment. Notification to the respondent's
5 current employer shall occur no later than the effective date of the Decision or immediately
6 commencing employment. Respondent shall submit, upon request by the Board or its designee,
7 satisfactory evidence of compliance with this term of probation.

8 **16. Violation of Probation.** If Respondent violates the conditions of her probation, the
9 Board, after giving Respondent notice and the opportunity to be heard, may set aside the stay
10 order and impose the discipline revocation of Respondent's license provided in the decision.

11 If during the period of probation, an accusation, petition to revoke probation, or statement
12 of issues has been filed against Respondent's license or application for licensure, or the Attorney
13 General's office has been requested to prepare such an accusation, petition to revoke probation, or
14 statement of issues, the probation period set forth in this decision shall be automatically extended
15 and shall not expire until the accusation, petition to revoke probation, or statement of issues has
16 been acted upon by the board. Upon successful completion of probation, Respondent's license
17 shall be fully restored.

18 **17. Maintain Valid License.** Respondent shall, at all times while on probation, maintain
19 a current and active license with the Board, including any period during which suspension or
20 probation is tolled. Should Respondent's license, by operation of law or otherwise, expire, upon
21 renewal Respondent's license shall be subject to any and all terms of this probation not previously
22 satisfied.

23 **18. License Surrender.** Following the effective date of this decision, if Respondent
24 ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms
25 and conditions of probation, Respondent may voluntarily surrender her license to the Board. The
26 Board reserves the right to evaluate the Respondent's request and to exercise its discretion
27 whether to grant the request or to take any other action deemed appropriate and reasonable under
28 the circumstances. Upon formal acceptance of the tendered license, Respondent will no longer be

1 subject to the terms and conditions of probation.

2 Voluntary surrender of Respondent's license shall be considered to be a disciplinary action.
3 and shall become a part of Respondent's license history with the Board. Respondent may not
4 petition the Board for reinstatement of the surrendered license. Should Respondent at any time
5 after voluntary surrender ever reapply to the Board for licensure, Respondent must meet all
6 current requirements for licensure including, but not limited to, filing a current application,
7 meeting all current educational requirements, and taking and passing any and all examinations
8 required of new applicants.

9 **19. Instruction of Coursework Qualifying for Continuing Education.** Respondent
10 shall not be an instructor of any coursework for continuing education credit required by any
11 license issued by the Board.

12 **20. Notification to Referral Services.** Respondent shall immediately send a copy of this
13 decision to all referral services registered with the Board in which Respondent is a participant.
14 While on probation, Respondent shall send a copy of this decision to all referral services
15 registered with the Board that Respondent seeks to join.

16 **21. Cost Recovery.** Respondent shall pay the Board \$1,145.50 as and for the reasonable
17 costs of the investigation and prosecution of Case No. MF-2008-1187. Respondent shall make
18 such payments on a schedule as determined by the Board. Payment must be completed six (6)
19 months prior to termination of probation. Respondent shall make the check or money order
20 payable to the Board of Behavioral Sciences and shall indicate on the check or money order that it
21 is the cost recovery payment for Case No. MF-2008-1187. Any order for payment of cost
22 recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate
23 until full payment has been made. Should any part of cost recovery not be paid in accordance
24 with the outlined payment schedule, Respondent shall be considered to be in violation of
25 probation. A period of non-practice by Respondent shall not relieve Respondent of her obligation
26 to reimburse the Board for its costs.

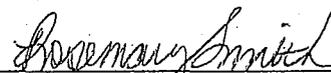
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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Marriage and Family Therapist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Behavioral Sciences.

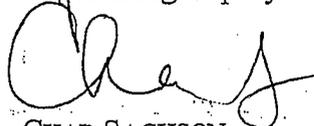
DATED: 5/29/09 
ROSEMARY SMITH
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Behavioral Sciences of the Department of Consumer Affairs.

Dated: June 9, 2009

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General


CHAR SACHSON
Deputy Attorney General
Attorneys for Complainant

SF2009403427

Exhibit A

Accusation No. MF-2008-1187

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOË
Supervising Deputy Attorney General
3 CHAR SACHSON, State Bar No. 161032
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4 455 Golden Gate Avenue, Suite 11000
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5 Telephone: (415) 703-5558
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6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. MF-2008-1187

11 ROSEMARY SMITH
12 2150 Garden Road, B-1
Monterey, CA 93940
13 Marriage and Family Therapist License No.
MFC 36030

ACCUSATION

14 Respondent.

15
16 Complainant alleges:

17 PARTIES

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

21 2. On or about June 28, 1999, the Board of Behavioral Sciences issued
22 Marriage and Family Therapist License Number MFC 36030 to Rosemary Smith (Respondent).
23 The Marriage and Family Therapist License was in full force and effect at all times relevant to
24 the charges brought herein and will expire on December 31, 2010, unless renewed.

25
26 JURISDICTION

27 3. This Accusation is brought before the Board of Behavioral Sciences
28 (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 4982 states:

3 "The board may refuse to issue any registration or license, or may suspend or
4 revoke the license or registration of any registrant or licensee if the applicant, licensee, or
5 registrant has been guilty of unprofessional conduct. Unprofessional conduct shall include, but
6 not be limited to:

7 "(a) The conviction of a crime substantially related to the qualifications, functions,
8 or duties of a licensee or registrant under this chapter. The record of conviction shall be
9 conclusive evidence only of the fact that the conviction occurred. The board may inquire into the
10 circumstances surrounding the commission of the crime in order to fix the degree of discipline or
11 to determine if the conviction is substantially related to the qualifications, functions, or duties of
12 a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a
13 plea of nolo contendere made to a charge substantially related to the qualifications, functions, or
14 duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the
15 meaning of this section. The board may order any license or registration suspended or revoked, or
16 may decline to issue a license or registration when the time for appeal has elapsed, or the
17 judgment of conviction has been affirmed on appeal, or, when an order granting probation is
18 made suspending the imposition of sentence, irrespective of a subsequent order under Section
19 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not
20 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
21 indictment.

22 ..."

23 5. Section 490 of the Code provides, in pertinent part, that a board may
24 suspend or revoke a license on the ground that the licensee has been convicted of a crime
25 substantially related to the qualifications, functions, or duties of the business or profession for
26 which the license was issued..

27 6. Section 493 of the Code states:

28 "Notwithstanding any other provision of law, in a proceeding conducted by a board

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

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

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

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

18 CAUSE FOR DISCIPLINE

19 (CONVICTION)

20 9. Respondent is subject to disciplinary action under sections 4982(a) and/or
21 490 in that she was convicted of a crime. The circumstances are as follows:

22 10. On or about May 2, 2008, in the criminal proceeding entitled *People vs.*
23 *Smith, Rosemary*, County of Monterey Superior Court Case No. MS262778A, Respondent was
24 convicted, by her plea of nolo contendere, of violating Penal Code section 484(a)(theft).
25 Respondent was sentenced to serve three years probation. The circumstances were that on or
26 about January 6, 2008, Respondent stole groceries worth over \$600.00 from the Whole Foods
27 Market in Monterey, California.

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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 Number MFC 36030, issued to Rosemary Smith.
2. Ordering Rosemary Smith 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: MAR 30 2009


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

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