

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

In the Matter of the Accusation Against:

MICHAEL FLYNN SUCHANEK
11141 Trails end Ct.
Alta Loma, CA 91737

Marriage and Family Therapist License
No. MFC34095,

Respondent.

OAH No.: 2010020583

Case No.: MF-2009-35

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Behavioral Sciences as its Decision in the above-entitled matter.

This Decision shall become effective December 2, 2010.

IT IS SO ORDERED November 2, 2010.

BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By Renee B. Farnsworth

mjn

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Case No. MF-2009-35

OAH No. 2010020583

PROPOSED DECISION

This matter was heard by Richard J. Lopez, Administrative Law Judge with the Office of Administrative Hearings on July 23, 2010, at Los Angeles, California.

Brian Walsh, Deputy Attorney General, represented the Complainant.

Respondent appeared in person and represented himself.

Oral and documentary evidence was received and argument was heard and the matter then submitted for Decision.

The Administrative Law Judge now finds, concludes and orders as follows:

FACTUAL FINDINGS

Parties and Procedure

1. Kim Madsen, Complainant herein, brought the Statement of Issues in her official capacity as the Acting Executive Officer of the Board of Behavioral Sciences, Department of Consumer Affairs.

2. On May 30, 1997, the Board of Behavioral Sciences, Department of Consumer Affairs (Board) issued a Marriage and Family Therapist (MFT) License Number MFC34095 to Michael Flynn Suchanek, Respondent herein. The MFT License is in full force and effect and will expire on January 31, 2011, unless renewed.

3. All pre-hearing jurisdictional requirements have been met by the parties. Jurisdiction for this proceeding exists.

Criminal Conviction

4. On July 2, 2008, officers of the San Bernardino County Sheriff's Department arrested Respondent after investigating a hit-and-run automobile accident in which Respondent was involved. Investigation revealed that after rear-ending another vehicle, Respondent left the scene of the accident without giving any information to the other driver as is required by law. The investigating officers subsequently located Respondent, who admitted leaving the scene, and who displayed objective signs of intoxication while talking to the officers. Based on their determination that Respondent was intoxicated, the officers administered field sobriety tests and preliminary blood-alcohol tests. Respondent failed the field sobriety tests, and tests indicated a blood-alcohol level of approximately .17%, more than twice the legal limit. Respondent was subsequently arrested and subjected to criminal proceedings. Thereafter, on October 22, 2008, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving with a blood-alcohol content level greater than .08%], and one misdemeanor count of violating Vehicle Code section 20002, subdivision (a) [unlawfully leaving the scene of an accident], in the criminal proceeding entitled People of the State of California v. Michael Flynn Suchanek (Super. Ct. San Bernardino County, 2008, No. TWV802356).

5. The two misdemeanors, taken together are substantially related¹ to the qualifications, functions or duties of a person holding an MFT license in that said conduct, to a substantial degree, evidences present or potential unfitness of a person holding a license to perform the functions authorized by said license in a manner consistent with the public health, safety or welfare.

6. Respondent's use of alcohol, as is referenced in Finding 4 constitutes the use of alcohol in a manner dangerous to himself and others.

7. Respondent left the scene described in Finding 4 and failed to give information to the other driver because, in a drunken state, he panicked. It was not established that he had formed any intent to deceive. Accordingly, it was a wrongful, illegal act but not a dishonest act.

¹ California Code of Regulations, title 16, section 1812.

Mitigation

8. On the day and evening that Respondent drank to excess - July 2, 2008 – he was under stress from a loss of savings to pay down debt as a result of the ongoing Great Recession² and stress from other societal factors. Those circumstances do not excuse Respondent's wrongful conduct leading to the two misdemeanors but do mitigate same.

Rehabilitation and Character

9. As the result of his conviction Respondent was sentenced to five days in jail, placed on summary probation for three years, ordered to attend a first offender's alcohol education program (program) and ordered to pay fines and assessments. Respondent timely completed those requirements and was an active, engaged participant in the program. Respondent is in full compliance with probation which is set to end in October, 2011 at which time Respondent will be eligible to have the conviction expunged. There is no evidence, other than the conduct leading to the misdemeanors, that Respondent is an abuser of alcohol. Respondent is presently in conformity to society's norms and rules.

10. Respondent is in a stable marriage and he and his wife are parents to three children, two boys aged 17 and 15 and a girl, aged 9. All children are good students. The family attends religious services at Hillside Community Church (Church) in Monrovia on a regular basis. Respondent and his wife fulfill all familial and parental obligations and responsibilities.

11. Respondent recently completed Bible studies at the church and has and does provide volunteer work for the church. He and other church members have assisted in two Easter celebrations and in Christmas Holiday events. Additionally, under the aegis of the church's Outreach Program Respondent – a former athlete – has coached basketball, baseball and football youth teams. Further, together with his family Respondent does volunteer work for Adonai.³ Respondent's volunteer work constitutes significant and conscientious involvement in community and church programs designed to provide social benefits or to ameliorate social problems.

12. The stresses in Respondent's life have been relived by the completion of his Bible Studies and by his continued commitment to his church and the activities of his church. A colleague of Respondent's credibly proffered the following written testimonial as to Respondent:

² The financial crisis of year 2007 to the present triggered by a liquidity shortfall in the United States banking system caused by the overvaluation of assets.

³ An organization that supports chronically ill children with various forms of cancer.

I have known Mike Suchanek in a variety of capacities for many years. We are in a Bible based marriage/couples group. My wife and I have been a part of this group for approximately 6 years and I know Mike and his wife have been in positive study groups outside of this one.

I am also in a daily book study with Mike and several other men. We hold each other accountable everyday and read and discuss self help books.

In the last year and a half I have noticed a big positive change in Mike. He has taken life more serious and I can tell he is very focused on his family and friends.

Mike is organized, efficient, extremely competent, and has an excellent rapport with people of all ages. His communication skills, both written and verbal, are excellent.

In summary, I enjoy being Mike's friend and belonging to study/personal self help groups where he participates. He is very good with framing his words and teaching in a positive manner.

13. Respondent has been employed by the Fontana Unified School District for the last seven years as a school psychologist for middle school (grades 6th, 7th, and 8th) students. In that position he has been and continues to be an asset to the District and its students as is credibly detailed by a written testimonial from the principal of Fontana Middle School:

... I have known Mr. Suchanek as a counselor and a psychologist for the past nine years. Through our interactions for a short time as his supervisor and for the last seven years as colleague and a trust friend, Mr. Suchanek has proved to be a person of strong moral character and exemplary values. Mr. Suchanek goodness is overwhelming and contagious. He develops relationships based on dependability and honesty and promotes relationships of trust and respect. Mr. Suchanek recognizes and accepts personal assets and liabilities and is very sincere in sharing his life experiences to better shape the quality of his life and his family. He consistently displays strong moral judgment and energizing optimism that is an essential element in his keen ability to reach out to our at risk students.

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Mr. Suchanek is dedicated and detail oriented and has the ability to communicate with students, parents and staff in a positive and comforting manner. Mr. Suchanek's ability to connect with staff and students has proven very valuable to our organization and in running an effective educational program. Mr. Suchanek is committed to a life of servant leadership that he exemplifies in his daily interactions with everyone around him.

I not only consider Mr. Suchanek a colleague, but a close dear friend that has impacted my professional and personal life and many others in a positive direction. Mr. Suchanek has my complete trust, respect and admiration for who he is and what he stands for. I will forever offer such a person of character and faith my unwavering support for he is a pillar in our educational community.

14. Respondent testified in his own behalf and was open, honest and candid. He has a change of attitude from that which existed at the time of his wrongful conduct. He no longer drinks alcohol even in the absence of a history of alcohol abuse. He is contrite and remorseful about his conduct and the contrition and remorse are real.

Costs

15. It was established that the following reasonable costs for the investigation and enforcement of this case were incurred by the Board.

| | |
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| Office of the Attorney General legal fees and costs: | \$4,245.00 |
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16. Respondent along with many others has encountered economic hard times during the ongoing Great Recession. He and his wife are involved in a "short sale" process on their home and his salary, as a public employee, has been reduced.

LEGAL CONCLUSIONS

Violations

1. Respondent is subject to disciplinary action pursuant to Business and Professions Code (Code) sections 4982, subdivision (a) and Code section 490, in that Respondent has been convicted of misdemeanors that are substantially related to the qualifications, functions, or duties of a MFT licensee by reason of Finding 4 combined with Finding 5.

2. Respondent is subject to disciplinary action pursuant to Code section 4982, subdivision (c) by reason of Finding 4 combined with Finding 6.

3. Respondent is not subject to disciplinary action pursuant to Code section 4982, subdivision (j) and California Code of Regulations, title 16, section 1812 by reason of Finding 4 combined with Finding 7.

Costs

4. Business and Professions Code section 125.3 provides, in pertinent part, that the entity bringing a proceeding for discipline may request the Administrative Law Judge hearing the matter to direct a licensee found to have committed a violation of the applicable licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the proceeding. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the Administrative Law Judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Board must not assess the full costs where it would unfairly penalize the Respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Board must consider a Respondent's subjective good faith belief in the merits of his or her position and whether the Respondent has raised a colorable challenge; the Board must consider Respondent's ability to pay; and the Board may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a Respondent engaged in relatively innocuous misconduct.

In this case, the actual costs of investigation and enforcement of this matter are \$4,245, as set forth in Finding 15. However, taking into account Respondent's financial hardship set forth in Finding 16 and diminished ability to pay a reduction from the actual costs of approximately 70 percent is appropriate. Therefore, the reasonable costs of investigation and enforcement are \$1,270.

Licensing Considerations

5. The Board's Disciplinary Guidelines (Guidelines) were reviewed and considered by the Administrative Law Judge to determine the appropriate level of discipline warranted. Additionally, the objective of a disciplinary proceeding is to protect the public, the licensed profession, maintain integrity, high standards, and preserve public confidence in licensees of the Board.⁴ The purpose of proceedings of this type is not to punish Respondent. In particular, the statutes relating to MFT licensees are designed to protect the public from any potential risk of harm. The law looks with favor upon those who have been properly rehabilitated.

⁴ *Camacho v. Youde* (1975) 95 Cal.App3d, 165; *Clerical v. Department of Motor Vehicles* (1990) 224 Cal.App.3rd 1016, 1030-1031; *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 816.

6. California Code of Regulations, title 16, section 1814, a regulation of the Board states:

- (a) When considering the suspension or revocation of a license the board, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license or registration shall consider the following criteria:
 - (1) The nature of severity of the act(s) or crime(s) under consideration as grounds for suspension or denial.
 - (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or denial 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 expungment 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.

7. In the same sequential order:

- (1) The misdemeanors are serious in that the underlying conduct – driving while drunk – presents a risk of harm or death.
- (2) None
- (3) The conviction is recent.
- (4) Respondent is in compliance with probation.

(5) Respondent is still on probation.

(6) Not applicable.

(7) Not applicable.

(8) Respondent has established the significant rehabilitation set forth in Finding 9 through 14 together with mitigation (Finding 8).

8. Respondent's 2008 conviction is recent and he is still on probation. However, by reason of the hard work and diligence indicated in Findings 9 through 14, continued licensure, with a minimum penalty outlined in the Guidelines, is consistent with the public interest. The misdemeanors are an aberration in an otherwise socially and professional responsible life.

ORDER

Marriage and Family Therapist License Number MFC34095 issued to Respondent Michael Flynn Suchanek is revoked. However, the revocation is stayed and the license is placed on probation for a period of two years on the following terms and conditions:

1. Obey All Laws - Respondent shall obey all federal, state and local laws, all statutes and regulations governing the licensee, and remain in full compliance with any court ordered criminal probation, payments and other orders. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board or its designee in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, Respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within 30 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall pay the cost associated with the fingerprint process.

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

3. Comply with Probation Program - Respondent shall comply with the probation program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the program.

4. Interviews with the Board - Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

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

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in practice within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance, and Cost Recovery.

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

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

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

8. Supervision of Unlicensed Persons - While on probation, Respondent shall not act as a supervisor for any hours of supervised practice required for any license issued by the Board. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this Decision.

9. Notification to Clients - Respondent shall notify all clients when any term or condition of probation will affect their therapy or the confidentiality of their records, including but not limited to supervised practice, suspension, or client population restriction. Such notification shall be signed by each client prior to continuing or commencing treatment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation. Respondent shall seek guidance from Board staff regarding appropriate application of this condition.

10. Notification to Employer - Respondent shall provide each of his current or future employers, when performing services that fall within the scope of practice of his license, a copy of this Decision and the Statement of Issues or Accusation before commencing employment. Notification to the Respondent's current employer shall occur no later than the effective date of the Decision or immediately upon commencing employment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

11. Violation of Probation - If Respondent violates the conditions of his probation, the Board, after giving Respondent notice and the opportunity to be heard, may set aside the stay order and impose the revocation of Respondent's license.

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

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

13. License Surrender - Following the effective date of this decision, if Respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, Respondent may voluntarily request the surrender of his license to the Board. The Board reserves the right to evaluate the Respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 30 calendar days deliver respondent's license and certificate and if applicable wall certificate to the Board or its designee and Respondent shall no longer engage in any practice for which a license is required. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the terms and conditions of probation.

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

14. Instruction of Coursework Qualifying for Continuing Education - Respondent shall not be an instructor of any coursework for continuing education credit required by any license issued by the Board.

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

16. Cost Recovery - Respondent shall pay to the Board \$1,270 as and for the reasonable costs of the investigation and prosecution of OAH Case No. 2010020583. The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to reimburse the Board for its investigation and prosecution costs. Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

Respondent shall make the check or money order payable to the Board of Behavioral Sciences and shall indicate on the check or money order that it is the cost recovery payment for OAH Case No. 2010020583. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full payment has been made. Should any part of cost recovery not be paid in accordance with the outlined payment schedule, Respondent shall be considered to be in violation of probation. A period of non-practice by Respondent shall not relieve Respondent of his or her obligation to reimburse the board for its costs.

Cost recovery must be completed six months prior to the termination of probation. A payment plan authorized by the Board may be extended at the discretion of the Board based on good cause shown by the probationer.

Dated: August 20, 2010



RICHARD J. LOPEZ

Administrative Law Judge
Office of Administrative Hearings

RJL:rfm

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10 **DEPARTMENT OF CONSUMER AFFAIRS**
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14 Alta Loma, CA 91737
Marriage and Family Therapist
License No. MFC34095

A C C U S A T I O N

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Kim Madsen (Complainant) brings this Accusation solely in her official capacity as
21 the Acting Executive Officer of the Board of Behavioral Sciences, Department of Consumer
22 Affairs.

23 2. On or about May 30, 1997, the Board of Behavioral Sciences (Board) issued
24 Marriage and Family Therapist License Number MFC34095 to Michael Flynn Suchanek
25 (Respondent). The Marriage and Family Therapist License was in full force and effect at all
26 times relevant to the charges brought herein and will expire on January 31, 2011, unless renewed.

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1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.

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4 "(c) Administering to himself or herself any controlled substance or using of any of the
5 dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a
6 manner, as to be dangerous or injurious to the person applying for a registration or license or
7 holding a registration or license under this chapter, or to any other person, or to the public, or, to
8 the extent that the use impairs the ability of the person applying for or holding a registration or
9 license to conduct with safety to the public the practice authorized by the registration or license,
10 or the conviction of more than one misdemeanor or any felony involving the use, consumption, or
11 self-administration of any of the substances referred to in this subdivision, or any combination
12 thereof. The board shall deny an application for a registration or license or revoke the license or
13 registration of any person, other than one who is licensed as a physician and surgeon, who uses or
14 offers to use drugs in the course of performing marriage and family therapy services.

15

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

18 REGULATORY PROVISIONS

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

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

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