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

In the Matter of the Accusation Against:
KIMBERLY ANN MILLER
1826 Glasgow Avenue
Cardiff, CA 92007

Marriage and Family Therapist License No.
MFC 38845

Respondent.

Case No. MF-2011-163

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 20, 2011, Complainant Kim Madsen, in her official capacity as the Executive Officer of the Board of Behavioral Sciences, Department of Consumer Affairs, filed Accusation No. MF-2011-163 against Kimberly Ann Miller (Respondent) before the Board of Behavioral Sciences. (Accusation attached as Exhibit A.)

2. On or about June 21, 2002, the Board of Behavioral Sciences (Board) issued Marriage and Family Therapist License No. MFC 38845 to Respondent. The Marriage and Family Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 2012, unless renewed

3. On or about April 28, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. MF-2011-163, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,

///

1 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
2 Code section 136, is required to be reported and maintained with the Board, which was and is:
3 1826 Glasgow Avenue, Cardiff, CA 92007.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
6 124.

7 5. None of the aforementioned documents were returned by the U.S. Postal Service.

8 6. Government Code section 11506 states, in pertinent part:

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
15 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. MF-
16 2011-163.

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

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

22 9. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on
26 file at the Board's offices regarding the allegations contained in Accusation No. MF-2011-163,
27 finds that the charges and allegations in Accusation No. MF-2011-163, are separately and
28 severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement is \$25,513.31 as of May 24, 2011.

1 f. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and
2 (i), for unprofessional conduct, gross negligence, incompetence, and intentionally or recklessly
3 harming patient DM by verbally and physically abusing her.

4 g. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and
5 (i), for unprofessional conduct, gross negligence, incompetence, and intentionally or recklessly
6 harming patient DM by abandoning her and failing to properly terminate the therapeutic
7 relationship.

8 h. Respondent is subject to disciplinary action under section 4982, subdivisions (d), (i),
9 and (c), for unprofessional conduct, gross negligence, incompetence, and intentionally or
10 recklessly harming patient by administering drug or alcohol in a dangerous manner in that she
11 appeared to be under the influence of drugs or alcohol on occasion during her treatment of DM.

12 Charges Regarding Patient NA

13 i. Respondent is subject to disciplinary action under section 4982, subdivisions (d), (i),
14 and (m), for unprofessional conduct, gross negligence, incompetence, and intentionally or
15 recklessly harming patient by failing to maintain patient NA's confidentiality.

16 j. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and
17 (i) for unprofessional conduct, gross negligence, incompetence, and intentionally or recklessly
18 harming patient in that she engaged in unprofessional and dual relationships with patient NA.

19 k. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and
20 (v), for unprofessional conduct, gross negligence, and incompetence in that she failed to maintain
21 adequate treatment records.

22 l. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and
23 (i), for unprofessional conduct, gross negligence, incompetence, and intentionally or recklessly
24 harming patient in that she behaved in an abusive fashion to NA.

25 m. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and
26 (i), for unprofessional conduct, gross negligence, incompetence, and intentionally or recklessly
27 harming patient in that she failed to follow any type of discernable treatment plan, engaging in
28 chaotic, controlling, impulsive, and at times intimidating treatment processes with NA.

1 n. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and
2 (i), for unprofessional conduct, gross negligence, incompetence, and intentionally or recklessly
3 harming patient in that she abandoned and failed to properly terminate the clinical relationship
4 with NA.

5 o. Respondent is subject to disciplinary action under section 4982, subdivisions (d), (i),
6 and (c), unprofessional conduct, gross negligence, incompetence, and intentionally or recklessly
7 harming patient in that she appeared to be under the influence of drugs or alcohol on occasion
8 during her treatment of NA and took NA's prescribed medication, Xanax, from NA.

9 ORDER

10 IT IS SO ORDERED that Marriage and Family Therapist License No. MFC 38845,
11 heretofore issued to Respondent Kimberly Ann Miller, is revoked.

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

16 This Decision shall become effective on August 26, 2011.

17 It is so ORDERED July 27, 2011

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20 FOR THE BOARD OF BEHAVIORAL SCIENCES
21 DEPARTMENT OF CONSUMER AFFAIRS

22 80507064.DOC
23 DOJ Matter ID:SD2010703403

24 Attachment:
25 Exhibit A: Accusation
26
27
28

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. MF-2011-163

12 **KIMBERLY ANN MILLER**
13 **1826 Glasgow Avenue**
14 **Cardiff, CA 92007**

A C C U S A T I O N

15 **Marriage and Family Therapist License No.**
16 **MFC 38845**

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about June 21, 2002, the Board of Behavioral Sciences issued Marriage and
24 Family Therapist License Number MFC 38845 to Kimberly Ann Miller (Respondent). The
25 Marriage and Family Therapist License was in full force and effect at all times relevant to the
26 charges brought herein and will expire on February 29, 2012, unless renewed.

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JURISDICTION

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

5 4. Section 4982 states:

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

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

9 "....

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

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

22 "(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this
23 chapter or any regulation adopted by the board.

24 "....

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

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

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1 that time, Respondent formed dual and multiple relationships with DM. In addition to acting as
2 her psychotherapist, Respondent acted as DM's friend, companion, driver, and nurse.

3 Respondent failed to appropriately maintain psychotherapeutic boundaries with DM. Respondent
4 would intimately kiss DM on the mouth; she hired DM as her intern; she had DM pay some of her
5 bills; she took DM on errands, shopping trips, overnight family visits, and visits to other patients;
6 and she took DM to medical appointments. Respondent even managed some of DM's
7 medications, telling her to take additional Xanax.

8 **SECOND CAUSE FOR DISCIPLINE**
9 **(Unprofessional Conduct, Gross Negligence, Incompetence, and**
10 **Intentionally or Recklessly Harming Patient**
11 **by Engaging in Dishonest, Corrupt, or Fraudulent Acts Against DM)**

12 8. Respondent is subject to disciplinary action under section 4982, subdivisions (d), (i),
13 and (j), in that she engaged in dishonest, corrupt, or fraudulent acts against patient DM. The
14 circumstances are as follows:

15 9. During her provision of therapy to DM, Respondent borrowed money from DM; took
16 money directly from DM's account; took DM's personal possessions from DM's home; and took
17 DM's prescribed medication.

18 **THIRD CAUSE FOR DISCIPLINE**
19 **(Unprofessional Conduct, Gross Negligence, Incompetence, and**
20 **Intentionally or Recklessly Harming Patient**
21 **by Failing to Maintain Patient DM's Confidentiality)**

22 10. Respondent is subject to disciplinary action under section 4982, subdivisions (d), (i),
23 and (m), in that she failed to maintain patient DM and her other patient's confidentiality. The
24 circumstances are as follows: Respondent released DM's name to numerous individuals,
25 including other patients; told DM the name of her other patients; took DM to other patient's
26 homes, and brought other patients to DM's home.

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FOURTH CAUSE FOR DISCIPLINE
**(Unprofessional Conduct, Gross Negligence, and Incompetence
by Failing to Keep Adequate Records)**

11. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and (v), in that she failed to maintain adequate treatment records. Respondent failed to appropriately maintain patient records, failed to maintain treatment notes, and failed to maintain them under lock and key and inaccessible to patients.

FIFTH CAUSE FOR DISCIPLINE
**(Unprofessional Conduct, Gross Negligence, Incompetence, And
Intentionally Or Recklessly Harming Patient By Practicing Outside Of Her Licensure)**

12. Respondent is subject to disciplinary action under section 4982, subdivisions (d), (i), (l), and (s), in that she practiced outside of her licensure and competence when she managed DM's medications, advising her to take more Xanax, a prescribed tranquilizing medication.

SIXTH CAUSE FOR DISCIPLINE
**(Unprofessional Conduct, Gross Negligence, Incompetence, And
Intentionally Or Recklessly Harming Patient By Verbally And Physically Abusing Her)**

13. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and (i), in that she behaved in an abusive fashion to DM. For example, Respondent struck DM in the face; grabbed DM's domestic partner by the throat; called DM demeaning names, such as "sociopath;" and threatened DM with incarceration.

SEVENTH CAUSE FOR DISCIPLINE
**(Unprofessional Conduct, Gross Negligence, Incompetence, And
Intentionally Or Recklessly Harming Patient By Abandoning Her)**

14. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and (i), in that she abandoned and failed to properly terminate the clinical relationship with DM. Respondent abruptly terminated the therapeutic relationship and did not provide DM with the names of other therapists who could be of assistance to DM. This was especially egregious given DM's vulnerability.

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EIGHTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct, Gross Negligence, Incompetence, and Intentionally or Recklessly Harming Patient by Administering Drug or Alcohol in a Dangerous Manner)

15. Respondent is subject to disciplinary action under section 4982, subdivisions (d), (i), and (c), in that she appeared to be under the influence of drugs or alcohol on occasion during her treatment of DM. She drove DM while appearing to be intoxicated and drove herself late at night and apparently intoxicated to DM's home. Respondent took DM's dexedrine, an amphetamine that was prescribed for DM's attention deficit disorder, and sought a prescription for a narcotic pain reliever from DM's domestic partner.

Patient NA

NINTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct, Gross Negligence, Incompetence, and Intentionally or Recklessly Harming Patient by Failing to Maintain Patient NA's Confidentiality)

16. Respondent is subject to disciplinary action under section 4982, subdivisions (d), (i), and (m), in that she failed to maintain patient confidentiality. The circumstances are as follows: Respondent saw Patient NA for individual therapy from approximately September of 2009 to January 2010. During that time, Respondent failed to maintain NA and other patient's confidentiality. Respondent shared NA's confidential information with NA's parents, NA's ex-husband, and NA's boyfriend's ex-wife; shared other patient's confidential information with NA; took NA to visit another patient; had NA assist with the hospitalization of another patient; had NA and another patient sleep in her home on the same night; and provided testimony regarding NA without permission to do so.

TENTH CAUSE FOR DISCIPLINE
(Unprofessional Conduct, Gross Negligence, Incompetence, and Intentionally or Recklessly Harming Patient by Having a Dual Relationship with NA)

17. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and (i) in that she engaged in unprofessional and dual relationships with patient NA. In addition to acting as her psychotherapist, which should have been her only role with respect to NA,

1 Respondent acted as NA's friend and companion, failing to maintain appropriate
2 psychotherapeutic boundaries with NA. The circumstances are as follows:

3 18. Respondent had NA spend the night at her home, once with another patient;
4 Respondent drove NA's car; Respondent had her son meet and plan to socialize with NA's son;
5 and Respondent took money and prescription medication from NA.

6 **ELEVENTH CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct, Gross Negligence, and Incompetence
by Failing to Keep Adequate Records)**

8 19. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and
9 (v), in that she failed to maintain adequate treatment records. Respondent kept no organized
10 records of a treatment process with NA. Respondent kept some notes related to NA that were
11 chaotic. Despite numerous requests by NA, Respondent was unable to provide NA with any
12 treatment records.

13 **TWELFTH CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct, Gross Negligence, Incompetence, And
Intentionally Or Recklessly Harming Patient By Being Abusive to Her)**

15 20. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and
16 (i), in that she behaved in an abusive fashion to NA. The circumstances are as follows:
17 Respondent intimidated NA by threatening her with several 72 hour holds or to call child
18 protective services on her, as punishment for offenses such as failing to show up for therapy
19 appointments or not cooperating with therapy.

20 **THIRTEENTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct, Gross Negligence, Incompetence, And
Intentionally Or Recklessly Harming Patient By Chaotic and Unplanned Treatment)**

22 21. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and
23 (i), in that she failed to follow any type of discernable treatment plan, engaging in chaotic,
24 controlling, impulsive, and at times intimidating treatment processes with NA. The
25 circumstances are as follows:

26 22. Respondent engaged the assistance of NA's three minor children in disposing of all of
27 the alcohol in NA's home, telling them "mommy is an alcoholic;" shifted between individual
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1 therapy, couples therapy, alcohol abuse counseling, family therapy, and some form of
2 intervention on behalf of NA's parents, and at other times involved NA with her other patients;
3 and took NA with her on errands.

4 **FOURTEENTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct, Gross Negligence, Incompetence, And
6 Intentionally Or Recklessly Harming Patient By Abandoning Her)**

7 23. Respondent is subject to disciplinary action under section 4982, subdivisions (d) and
8 (i), in that she abandoned and failed to properly terminate the clinical relationship with NA.
9 Respondent abruptly terminated the relationship and did not provide NA with the names of other
10 therapists who could be of assistance to NA.

11 **FIFTEENTH CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct, Gross Negligence, Incompetence, and
13 Intentionally or Recklessly Harming Patient
14 by Administering Drug or Alcohol in a Dangerous Manner)**

15 24. Respondent is subject to disciplinary action under section 4982, subdivisions (d), (i),
16 and (c), in that she appeared to be under the influence of drugs or alcohol on occasion during her
17 treatment of NA and took NA's prescribed medication, Xanax, from NA.

18 **PRAYER**

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

21 1. Revoking or suspending Marriage and Family Therapist License Number MFC
22 38845, issued to Kimberly Ann Miller;

23 2. Ordering Kimberly Ann Miller to pay the Board of Behavioral Sciences the
24 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
25 Professions Code section 125.3;

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

27 DATED: April 20, 2011



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

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