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

In the Matter of the Accusation Against:

Case No. MF-2011-343

KATHERINE WILKINS

OAH No. 2011080590

Marriage and Family Therapist License No.
MFC 28284

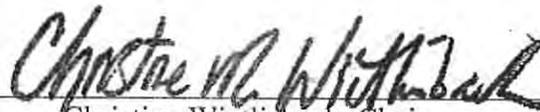
Respondent.

DECISION

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

This Decision shall become effective on June 8, 2012.

IT IS SO ORDERED May 9, 2012.



Christine Wietlisbach, Chair
Board of Behavioral Sciences

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

In the Matter of the Accusation Against:

KATHERINE WILKINS

Marriage and Family Therapist License
No. MFC 28284,

Respondent.

Case No. MF-2011-343

OAH No. 2011080590

PROPOSED DECISION

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California, heard this matter on March 29, 2012, in Oakland, California.

Deputy Attorney General Char Sachson, Department of Justice, represented complainant Kim Madsen.

Attorney at Law Bradford J. Hinshaw of Hinshaw, Marsh, Still and Hinshaw, 12901 Saratoga Avenue, Saratoga, California 95070, represented respondent Katherine Wilkins, who was present for the proceeding

The record was held open to afford respondent Katherine Wilkins an opportunity to supplement the record with a copy of a superior court order under Penal Code section 1203.4 that would pertain to an application for record clearance of the conviction. On April 3, 2012, OAH received from respondent, through her counsel, a letter stating that there had never been an application made on behalf of respondent for criminal record clearance. (The letter was marked as exhibit "B," was received as argument.)

On April 3, 2012, the parties were deemed to have submitted the matter for decision and the record closed.

FACTUAL FINDINGS

1. On July 14, 2011, complainant Kim Madsen, Executive Officer (Complainant), Board of Behavioral Sciences (the board), Department of Consumer Affairs, in her official capacity, made the Accusation against respondent Katherine Wilkins (respondent).

License Information

2. On July 26, 1991, the board issued Marriage and Family Therapist License Number MFC 28284 to respondent. The license issued to respondent was in full force and effect at all times relevant to the matters raised in the Accusation. The license will expire on August 12, 2012, unless renewed before that date.

First Cause for Discipline – Criminal Conviction

3. On May 16, 2008, in case number BB831478, titled *The People of the State of California v. Katherine Otterson Wilkins*, in the California Superior Court for the County of Santa Clara, respondent was convicted, on a plea of nolo contendere, of violating Vehicle Code section 23103, subdivision (a) (Reckless Driving), a misdemeanor.

4. The facts and circumstances that led to respondent's conviction in May 2008 arose out of events that occurred on December 7, 2007.

On that December 2007 date at approximately 5:30 p.m., respondent operated her personal automobile in a manner so that the vehicle crashed into a parked vehicle. The force of the crash caused each vehicle to sustain major damage. (A law enforcement officer estimated that respondent's vehicle had been traveling at a rate of, at least, 30 miles per hour in a zone posted for a maximum speed of 25 miles per hour.)

At the crash site, a Palo Alto City Police Department officer responded to the collision. The officer recorded in his report that respondent explained that due to her chronic rheumatoid arthritis, her fingers were swollen and injured. (Her prescription of Prednisone, which treats the rheumatoid arthritis condition, results in respondent having thin skin, which is easily cut.) As she drove her car she noticed bleeding on a finger, she reached towards the car's glove box to retrieve a first aid kit. During the process of searching through the first aid kit for a bandage, respondent's vehicle collided with the parked car.

The report of the arresting police officer reflects the observations made by the police officer during his interactions with respondent. When the officer first contacted respondent, her emotions were "agitated and distracted." Respondent exhibited difficulty "standing in one place" The officer's observations further led him to detect "nystagmus in both eyes, with onset at approximately 25 degrees, and pronounced bouncing at the outer edges." Also, the police officer's observations prompted him to cause respondent to undergo a field sobriety test. Among other things, the officer observed that respondent's "torso swayed from side-to-side." On the "Line-Walk" test, respondent "missed touching heel-to-toe on steps 4, 5, 6, and 7." And she stopped after each step during the aspect of the sobriety test. Because respondent failed aspects of the field sobriety test as administered by the police officer, she was arrested for violation of Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol or Drugs). (In addition to respondent being under the influence of

drugs, the police report determined a cause of the collision involved respondent's violation of Vehicle Code section 22350 (Driving at a Speed Unsafe for Conditions.)

After respondent's arrest, the investigating police officer found 17 different drugs¹ in the purse belonging to respondent. The police officer took as evidence the pills and noted the samples as "Norco pain pills, Provigil stimulants, Ativan anti-anxiety pills, Ambien sedatives, and Imitrex anti-migraine pills . . . Prednisone anti-inflammatory pills, Fiorinol anti-migraine pills, and Fosinopril blood pressure pills."

Laboratory tests detected zero percent blood alcohol content in respondent's system, but the tests did reveal "opiates present" in respondent's body at the time to the collision.

Although respondent had been arrested on December 7, 2007, and criminal prosecution of her commenced because of her alleged violation of Vehicle Code section 23152, subdivision (a), at a superior court pretrial conference, where respondent agreed to enter a no contest plea, the charge of driving under the influence of drugs against respondent was amended so that the conviction was entered on May 16, 2008, under Vehicle Code section 23103, subdivision (a).

5. As a consequence of the May 2008 conviction, the superior court suspended imposition of sentence and placed respondent on court (informal) probation for a period of two years. The probation's terms and conditions included an order that respondent complete a 12-hour first-offender reckless driving counseling program and a directive that respondent pay fines and fees of approximately \$1,150. (The court noted that respondent could complete the counseling course in San Mateo County.)

6. The crime of reckless driving, under the facts and circumstances of respondent's criminal offense, is substantially related to the qualifications, functions, or duties of a Marriage and Family Therapist licensee.

CRIMINAL CONVICTION - MATTERS IN REHABILITATION

7. Respondent's criminal conviction was entered in May 2008, which was a date occurring more than three years before complainant issued the Accusation in this matter. And respondent's criminal offense, which occurred in December 2007, happened four years, three months before the hearing in this matter.

8. Respondent represented at the hearing of this matter that she had successfully completed the 12-hour reckless driving course of instruction and she promptly paid the fines

¹ At the arrest site, respondent waived her "Miranda rights" and assisted the officer in identifying the drugs in her possession as: "Norco" (hydrocodone/ acetaminophen), Provigil, Ativan, Ambien, Imitrex, Prednisone, Fosinopril, Tiazac, Beano, Lactaid, Gas-ex, Allegra, Fiorinol, Mucinex, Nexium, Corioidin, and Lasix.

and fees arising out of the conviction in May 2008. (However, she produced no documents from the court to corroborate her testimony.) It appears that by May 2010, which was the second year anniversary of the conviction, respondent had completed the conditions of probation due to the conviction. Hence, respondent's probation ended one year, two months before the date of the accusation in this matter.

9. Respondent continues to be active as a practicing Marriage and Family Therapist. Although she is a sole practitioner, respondent occupies an office within a suite of offices where four other mental health counselors and therapists, including one psychologist, provide services to patients. Respondent has the ability to turn to any one of the other practitioners, situated in the suite where her practice is based, to assist her in the event that she encounters personal problems, including health-related ailments.

10. Respondent is married and she has a daughter. She, thus, has the support of family members with her regard to her coping with ongoing serious physical ailments, including the effects of pain-relief medications.

MATTERS THAT SUGGEST RESPONDENT HAS NOT ATTAINED REHABILITATION

11. Respondent did not introduce at the hearing of this matter a court order stemming from a petition under Penal Code section 1203.4 that would indicate that her criminal conviction record has been expunged. And notwithstanding respondent's representations at the hearing, there is no documentary evidence to establish that she faithfully fulfilled the terms and conditions associated with the probation imposed by reason of the criminal conviction in May 2008.

Second Cause for Discipline – Administering Narcotics in a Manner Dangerous to Self or Others

12. Although she presented no documentary proof, respondent claimed at the hearing of this matter that the day before the collision on December 7, 2007, which resulted in her arrest for driving under the influence of drugs, she had received a cortisone injection into her low back. On the date of the injection, she received a prescription for hydrocodone (Norco²) for pain. And on the day of the collision, respondent had consumed two Norco pills before the mishap.

13. The police report showed respondent to have been agitated and distracted immediately after the collision. She failed a field sobriety test that established her to have

² Norco is the brand name for compounds of varying dosages of acetaminophen and hydrocodone bitartrate, a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4). Norco is prescribed for treatment of pain relief. It is designated as a dangerous drug under Business and Professions Code section 4022.

exhibited a lack of coordination and balance. And after her arrest, blood test results showed that she had opiates in her system.

Before the collision, an officer estimated the speed of her car as moving at 30 miles per hour in a posted zone for 25 mile per hour traffic. The violence of the collision wrecked respondent's vehicle as well as the car of another person.

At the scene, respondent complained of head pain and chest pain that were attributable to the collision of her vehicle with a parked car.

14. Based on the foregoing, respondent's criminal conduct in December 2007 involved her use of narcotics to an extent that was injurious to herself or others.

MATTERS IN MITIGATION - ADMINISTERING NARCOTICS IN A MANNER DANGEROUS TO SELF OR OTHERS

15. At the hearing of this matter, respondent poignantly described her chronic poor health conditions and the need she has had to consume narcotics as therapeutic agents, which enable her to function in activities of daily living.

For approximately 20 years, respondent has been impacted by a disease process, which falls under a diagnosis of rheumatoid arthritis. The disorder has culminated in deforming her joints, and in particular her hands. And she has developed "severe, central spinal stenosis" as well as a ruptured disc at the L3-L4 vertebra level. Respondent credibly claims that she underwent steroid injections into her low back region on December 6, 2007, the day preceding the automobile collision. (However, respondent did not produce copies of medical records or reports to corroborate her representation.) The procedure supposedly required respondent to receive a form of sedation. On her discharge from the in-office procedure, respondent's treating physician provided her with a prescription for Norco for pain relief. Respondent understood that she was not to drive for a 24-hour period; however, she believed that on December 7, 2008, she was capable to safely operate an automobile. (At the hearing, respondent also testified that she understood that she was strictly prohibited from driving only for a 12-hour period "after the procedure.")

16. Respondent claims that before the morning of December 7, 2008, she had never consumed Norco. (In the past she has taken Vicodin, which is another brand name for the pain relief, Schedule III controlled substance, which is a compound consisting of acetaminophen and hydrocodone bitartrate.) On that date, respondent interacted with one patient who came to her office for counseling at approximately 3:00 p.m. During the session she experienced pain so that she stood as she counseled the patient. After ending the patient's session, she applied an ice pack to her low back and she lay on the floor for an unspecified period of time. At approximately 4:30 p.m., respondent administered to herself a second Norco pill on that day. Then because she experienced hunger, she chose to drive to a frozen yogurt store, which was approximately six blocks from her office. After purchasing

the yogurt, respondent considered cancelling her second patient for the day because of ongoing pain, but she decided to drive back to her office.

MATTERS IN REHABILITATION AND CHANGED BEHAVIOR - - ADMINISTERING
NARCOTICS IN A MANNER DANGEROUS TO SELF OR OTHERS

17. Since the date of the criminal conviction, respondent has developed a working relationship with a medical doctor, who specializes in pain management. She goes for treatment with that physician on an unknown schedule for visits.

18. Since the date of the automobile collision and her subsequent conviction for reckless driving, respondent has been committed to a habit of abstaining from taking any manner of pain-relief medication before she begins a trip by car when she must drive.

Third Cause for Discipline – Failure to Disclose Conviction on Renewal Application

19. On June 6, 2008, respondent signed, under penalty of perjury that information was true and correct, the board's licensure renewal form. On the form, she checked "No," to the question that asks, "Since your last renewal have you been convicted of, or pled nolo contendere to, a misdemeanor or felony Convictions dismissed under Section 1203.4 of the Penal Code must be disclosed."

20. In June 2008, respondent made a false and inaccurate representation on the board's application for licensure renewal.

FAILURE TO DISCLOSE CONVICTION ON RENEWAL APPLICATION – MATTERS IN
AGGRAVATION

21. At the hearing of this matter, respondent's explanation regarding the false and misleading entry on the application form was that she simply made a mistake in that she did not believe that she had had sustained a misdemeanor conviction that was required to be disclosed because she perceived that she had sustained only a "traffic violation" offense through the criminal court proceeding as mentioned above. And respondent proclaimed that she did not have the benefit of conferring with her criminal defense lawyer about the affect of the conviction on her license renewal application. But, respondent's explanation is not credible.

On December 7, 2007, she was involved in a serious automobile collision to which a police officer responded. The collision resulted in major damage to the vehicles involved in the mishap. During the interaction with the investigating police officer, respondent was subjected to a field sobriety test that she failed. She was arrested and transported to a police station where her blood was drawn. On the evening of the date of the collision, in order to gain her release from jail, her husband was required to sign a police department form titled "Custodial Agreement Release on Own Recognizance." On January 11, 2008, an Amended

Citation (Misdemeanor Complaint) was filed against respondent that restated the offense under which she was being prosecuted, namely, "DRIVING UNDER THE INFLUENCE OF DRUGS AND THE COMBINED INFLUENCE OF DRUGS AND ALCOHOL," in violation of Vehicle Code section 23152(a), a misdemeanor." Respondent hired a criminal defense lawyer to represent her in the criminal prosecution against her. Before she made a plea to the criminal citation, nearly six months elapsed during which respondent was prosecuted for the driving under the influence charge, which carried a potential penalty of several days in jail, a potential suspension of her driving privileges, greater fines and fees and other onerous terms than to which she was eventually subjected. At a pretrial conference in May 2008, her criminal defense lawyer's efforts resulted in the driving under the influence charge being reduced to a reckless driving charge. As a result to the conviction, respondent was placed on probation that included terms and conditions of paying fines and fees of more than \$1,000 and requiring her to complete a 12-hour reckless driving program. (And it is more likely than not that respondent was advised by her criminal defense lawyer that should she fail to fulfill the terms and conditions of probation, she would be subject to further criminal court proceedings and potential greater penalties for such neglect.)

22. By filing a false, incomplete, and misleading application for licensure renewal with the board, respondent sought to deceive the board with regard to the true history of her arrest record and the conviction experienced by her.

A reasonable inference is drawn that respondent sought to procure re-licensure as a Marriage and Family Therapist by fraud, misrepresentation or deceit, or by making a knowing material misstatement of fact in the application for re-licensure.

23. Respondent's serious medical conditions, and her need to consume potent pain-relief narcotics to treat those conditions, may have had an effect on her decision-making processes and judgment in providing a response to the board's license renewal application's question regarding her having a criminal conviction record.

General Matters in Mitigation and Respondent's Background

24. Respondent is 61 years old as she has a date of birth of July 25, 1950. She appears to be a mature, sober and intelligent individual.

25. In 1986, respondent completed her undergraduate degree in psychology at San Francisco State University (SFSU). In 1989, she obtained a master's degree in clinical psychology from SFSU. And after securing the master's degree, she performed 3,000 hours of supervised work, which involved interacting with patients, at the Community Counseling and Education Center in Fremont, California.

26. Since acquiring licensure in 1991, respondent has had an uninterrupted course of being fully engaged in the profession of being a licensee of the board. For a number of years, respondent has maintained a private practice in Palo Alto, California, which entails her

“seeing” individuals and couples, who have an array of difficulties including depression, anxiety, marital difficulties, life changes and various other problems.

Respondent made reference to a particularly unique aspect of her practice, which pertains to her eight-year-long provision of services to a woman who has major depression and has expressed suicidal ideation. The patient is noted to be “dependent” upon the particular counseling and therapy offered by respondent. Respondent opines that the unique patient, who is seen by respondent three times each week, may not tolerate the cessation of respondent’s provision of services and the woman may commit suicide should respondent’s practice be suspended. The unique patient may be in impending jeopardy because the person has recently asserted that killing herself may be a means for the woman to “go to heaven” to be with her recently deceased mother.

27. Before the subject disciplinary proceeding, the board had never filed any disciplinary actions against respondent’s license.

28. Complainant offered no evidence that a complaint regarding respondent’s skills or performance as a Marriage and Family Therapist licensee has been brought against her by another licensee, any health care professional, or a consumer.

29. There is no record that respondent has ever been afflicted with difficulties associated with excessive use of alcoholic beverages.

30. Before the evening of her reckless driving offense, respondent had never been questioned or apprehended by a law enforcement officer for any form of conduct associated with abuse of controlled substances, dangerous drugs or illegal drugs.

31. Respondent has no history of having abused controlled substances or illegal drugs. During her tenure as a Marriage and Family Therapist, respondent has not had any documented problem with drug use while acting in her licensed capacity.

Witnesses in Rehabilitation

32. One witness appeared at the hearing in support of respondent retaining licensed status as a Marriage and Family Therapist. Bernard Wilcosky, M.D., came to the hearing to offer evidence in support of respondent.

Dr. Wilcosky is a practicing physician who is board certified as a specialist in both anesthesiology and pain management. He has been a pain management specialist since 1985. His work entails treating persons with intractable pain that is nonresponsive to other therapies.

In February 2010, respondent became a patient of Dr. Wilcosky. Respondent’s last treatment with the pain management physician before the hearing date occurred on February

15, 2012. Over more than two years that respondent has been his patient, Dr. Wilcosky has found respondent to be capable to function well in her profession even though she suffers with great pain. However, if she were unable to take the level of pain-relief medication that is now prescribed to her, respondent would be wholly non-functional in a workplace setting.

Also, over the two-year period that he has acted as respondent's pain management care provider, Dr. Wilcosky has never suspected that because of the amount of medication prescribed to her that respondent was not capable of operating a motor vehicle or to attend to activities of her daily living. And, Dr. Wilcosky has determined respondent to be a very compliant patient, who does her utmost to participate in addressing her serious back pain and joint pain.

Other Matters

33. Dr. Wilcosky did not testify with regard to a current, precise level of narcotics or other prescription medication that are being administered to respondent. Also, the pain management physician did not name the orthopedists, rheumatologists, surgeons or other health care providers who have treated respondent since May 2008. And through Dr. Wilcosky, respondent did not provide copies of the medical records written for respondent that set out the extent of treatment that the pain management physician has rendered to the subject board licensee. And no evidence was submitted regarding the number of treatment days that respondent has actually received over the past two years from the pain management medical doctor.

34. At the hearing of this matter, respondent asserted that since "the incident" she has had "three surgeries" to her back and that her back pain has increased.

35. No other board licensee, or other mental health provider who works as a colleague or associate to respondent, offered evidence at the hearing of this matter regarding respondent's sobriety and general capability to provide services to patients who seek the service of a board licensee. No mental health counselor came to the hearing to offer evidence regarding respondent's attitude with respect to her record of having a criminal conviction. And no other board licensee offered evidence regarding respondent's capacity to cope with pain, and related drug-therapy, that suggests she is functioning competently as a therapist despite the severe orthopedic ailments that afflict her.

36. Respondent offered no letter, declaration or affidavit to establish that she has the respect and admiration of fellow professionals in behavioral science professional endeavors or other persons who support respondent's interest in retaining her licensed status as a Marriage and Family Therapist.

37. Respondent presented no evidence that other therapists have referred patients to respondent even though those licensees may have been aware of her arrest for impaired driving or her reckless driving conviction.

38. No evidence was submitted to establish that since the time of her arrest for impaired driving or the date of her reckless driving conviction, respondent has adopted stress reduction techniques, such as pursuing an exercise program or relying upon her network of friends and professional associates, to cope with her personal health and related difficulties.

Moreover, there is no documentary evidence to establish that respondent's great stressors, involving physical disease and pain that existed in December 2007, do not continue to burden respondent to a degree as to adversely affect her ongoing practice as a board licensee.

Costs of Prosecution

39. Complainant incurred costs of prosecution of the accusation against Respondent as follows:

Attorney General Costs

Fiscal Year	No. of Hours	Hourly Rate	Total
By Deputy Attorney General 2009-2010	15.75	\$170	\$2,677.50
By Paralegal	1.00	\$120	\$120.00
TOTAL COSTS INCURRED:			\$2,797.50

40. Respondent made no compelling objection to complainant's petition for recovery of the costs of prosecution. Respondent offered no evidence for an order to diminish or expunge the costs payable to the board. Respondent offered no evidence to detract from the sound basis of complainant's objective to seek the disciplinary action against her license. And respondent presented no competent evidence to show that she cannot pay the board the reasonable amount of the costs incurred by complainant to prosecute this matter, especially if the board permits her to pay the costs under an installment payment plan that spans the term of probation as prescribed below.

41. Complainant's costs of prosecution in the amount of \$2,797.50 are reasonable.

LEGAL CONCLUSIONS

The Standard of Proof in this Administrative Adjudication Proceeding against Respondent

1. “Clear and convincing proof to a reasonable certainty” is the standard of proof to be applied as to facts in dispute under the Accusation from which disciplinary action may result against the registration held by Respondent. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.)

“Clear and convincing evidence” means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered. “Clear and convincing evidence” is a higher standard of proof than proof by “a preponderance of the evidence.” (CACI³ 201) “Clear and convincing evidence” requires a finding of high probability for the propositions advanced in an accusation against a targeted Respondent licensee. It must be so clear as to leave no substantial doubt and to command the unhesitating assent of every reasonable mind. (*In re Michael G.* (1998) 63 Cal.App.4th 700.) And, the standard of proof known as clear and convincing evidence is required where particularly important individual interests or rights are at stake. (*Weiner v. Fleischman* (1991) 54 Cal.3d 476, 487.)

The Factual Findings and Order, herein, rest upon proof by clear and convincing evidence to a reasonable certainty that shows respondent’s acts and omissions in the matters recorded herein.

Causes for Discipline

FIRST CAUSE FOR DISCIPLINE - CRIMINAL CONVICTION

2. Business and Professions Code section 490, subdivision (a), prescribes, in pertinent part, that the 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.”

Business and Professions Code section 4982, subdivision (a), prescribes that the board may suspend or revoke the license or registration of a licensee or registrant if she has engaged in unprofessional conduct. Unprofessional conduct includes:

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

³ Judicial Council of California, Civil Jury Instructions.

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

Cause to suspend or revoke respondent's license exists pursuant to Business and Professions Code section 4982, subdivision (a), as that section interacts with Business and Professions Code section 490, subdivision (a), by reason of the matters set forth in Factual Findings 3 and 6.

SECOND CAUSE FOR DISCIPLINE -ADMINISTERING NARCOTICS IN A MANNER DANGEROUS TO SELF OR OTHERS

3. Business and Professions Code section 4982, subdivision (c), establishes that the board may suspend or revoke the license or registration of a licensee or registrant if she has engaged in unprofessional conduct that consists of:

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

Cause to suspend or revoke respondent's license exists pursuant to Business and Professions Code section 4982, subdivision (c), by reason of the matters set forth in Factual Findings 4, and 12 through 14.

THIRD CAUSE FOR DISCIPLINE - FAILURE TO DISCLOSE CONVICTION OF RENEWAL APPLICATION

4. Business and Professions Code section 4982, subdivision (b), provides that the board may suspend or revoke the license or registration of a licensee or registrant if she has engaged in unprofessional conduct consisting of “[s]ecuring a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.”

Cause to suspend or revoke respondent’s license exists pursuant to Business and Professions Code section 4982, subdivision (b), by reason of the matters set forth in Factual Findings 19 through 22.

Rationale for Deviation from the Board’s Disciplinary Guidelines

5. The board has promulgated Disciplinary Guidelines that are set forth in a booklet that is available to licensees. In the booklet’s section, titled “Penalty Guidelines,” the guidelines direct that “[i]f there are deviations or omissions from the guidelines in formulating a [p]roposed [d]ecision, the Board requires that the [a]dministrative [l]aw [j]udge hearing the case include an explanation of the deviations or omissions” The interest of justice and common sense warrant deviation from the guidelines regarding the suggested discipline upon respondent, who has sustained a conviction of a crime that is substantially related to the licensed profession, who has a record of administering a narcotic to herself that was injurious to herself and another person’s property, and who made a material misrepresentation of fact on an application for license renewal.

The board’s guidelines specify outright revocation for a violation of Business and Professions Code section 4982, subdivision (b), which pertains to acquiring a license renewal for misrepresentation, fraud or deceit. In this matter, respondent’s material misrepresentation on the board’s license renewal form may have been due to the affects of the narcotic that she has been prescribed to treat her chronic pain conditions. Hence, the revocation action should be stayed so long as respondent adheres to the terms and conditions of probation set out below.

Costs of Prosecution

6. Complainant has requested that respondent be ordered to pay the board its costs of prosecution.

Code section 125.3 prescribes that a “licentiate found to have committed a violation or violations of the licensing act” may be directed “to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.”

The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, directed the licensing agencies to scrutinize certain factors pertaining to a board's exercise of discretion to reduce or to maintain a cost assessment, under a provision such as Business and Professions Code section 125.3, which is sought to be imposed upon a licensee found to have engaged in unprofessional conduct. Review or analysis under the *Zuckerman* mandate is set out in Factual Finding 40.

The costs of prosecution in this matter as set out in Factual Findings 39 and 41 are reasonable. The reasonable costs of prosecution amount to \$2,797.50.

Respondent is liable for the total amount of the costs of investigation and prosecution of the case.

Ultimate Determination

7. Complainant proved the Accusation's three causes for discipline against respondent. Although the board would be reasonable in executing an order for revocation, the interests of justice justify a period of probation.

At the hearing, respondent gave a poignant account of providing care to a unique patient, who has been closely associated with respondent for approximately eight years, and who has made repeated reference to killing herself absent respondent's provision of services. But at the hearing, respondent offered no documentary evidence in support the representation that her particular relationship with the unique patient was the sole factor that saves the individual from killing herself. Also respondent did not offered persuasive evidence that a reasonable transition period into temporary treatment with another therapist for the unique patient cannot be executed over the period of time leading up to commencement of a brief period of practice suspension, which will provide the time necessary for the board to assess respondent's ability to continue as a licensee who is safe with regard to the public health, welfare and safety. Hence, despite respondent's argument that no practice suspension should be part of the agency's action, in order for the board's approved physician and psychiatrist to thoroughly evaluate respondent's abilities and limitations, a period of license suspension is necessary.

Based on the Factual Findings and the Legal Conclusions above, the following Order is made.

ORDER

IT IS HEREBY ORDERED that Marriage and Family Therapist License Number MFC 28284 issued to Katherine Wilkins is revoked. However, the revocation is stayed and respondent is placed on probation for five (5) years on the following terms and conditions:

SEVERABILITY CLAUSE –

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Actual Suspension**

Commencing from the effective date of this decision, respondent shall be suspended from the practice of Marriage and Family Therapy for a period of 120 days, and such additional time as may be necessary to obtain and review psychological or psychiatric evaluation, to implement any recommendations from that evaluation.

2. **Psychological / Psychiatric Evaluation**

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the board or its designee, respondent shall complete a psychological or psychiatric evaluation by such licensed psychologists or psychiatrists as are appointed by the board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

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

Note: If supervised practice is not part of the order, and the evaluator finds the need for supervised practice, then the following term shall be added to the disciplinary order. If a psychological or psychiatric evaluation indicates a need for supervised practice, (within 30 days of notification by the board), respondent shall submit to the board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor by which the respondent's practice will be supervised.

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

3. **Abstain from Controlled Substances / Submit to Biological Fluid Testing and Samples**

Respondent shall completely abstain from the use or possession of controlled or illegal substances unless lawfully prescribed by a medical practitioner for a bona fide illness.

4. **Reimbursement of Probation Program**

Respondent shall reimburse the board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period. Reimbursement costs shall be set by the board within sixty days of the effective date of the Decision in this matter.

5. **Physical Evaluation**

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the board or its designee, respondent shall complete a physical evaluation by such licensed physicians as are appointed by the board. The cost of such evaluation shall be borne by respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

Such physician shall furnish a written report to the board or its designee regarding respondent's judgment and ability to function independently and safely as a therapist and such other information as the board may require. Respondent shall execute a Release of Information authorizing the physician to release all information to the board. Respondent shall comply with the recommendations of the physician.

If a physical evaluation indicates a need for medical treatment, within 30 days of notification by the board, respondent shall submit to the board or its designee the name and qualifications of the medical provider, and a treatment plan by the medical provider by which the respondent's physical treatment will be provided.

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

6. **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.

7. **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/she 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.

8. **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.

9. **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.

10. **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, 4996.9, or 4999.20 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California that 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 residing 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.

11. 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, 4996.9, or 4999.20 of the Business and Professions Code.

12. 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.

13. 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 supervisory relationship in existence on the effective date of this Decision.

14. **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 should seek guidance from board staff regarding appropriate application of this condition).

15. **Notification to Employer**

Respondent shall provide each of his or her current or future employers, when performing services that fall within the scope of practice of her 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.

16. **Violation of Probation**

If respondent violates the conditions of her probation, the board, after giving respondent notice and the opportunity to be heard, may set aside the stay order and impose the discipline revocation of respondent's license provided in the decision.

If during the period of probation, an accusation, petition to revoke probation, or statement of issues has been filed against respondent's license [or registration] or application for licensure, 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.

17. **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.

18. 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 her 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.

19. 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.

20. 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.

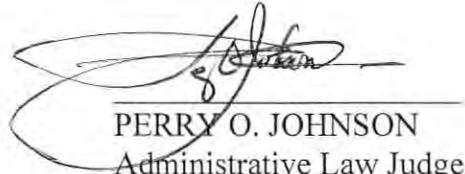
21. **Cost Recovery**

Respondent shall pay the board \$2,797.50 as and for the reasonable costs of the investigation and prosecution of Case No. MF 2011-343. Respondent shall make such payments as under a schedule of payments that is acceptable by the board.

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 Case No. MF 2011-343. 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 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 Enforcement Manager based on good cause shown by the probationer.

DATED: April 20, 2012



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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

10 In the Matter of the Accusation Against:

Case No. MF-2011-343

11 **KATHERINE WILKINS**
12 **660 Middlefield Road #B**
13 **Palo Alto, CA 94301**

ACCUSATION

14 **Marriage and Family Therapist License No.**
15 **MFC 28284**

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about July 26, 1991, the Board of Behavioral Sciences issued Marriage and
22 Family Therapist License Number MFC 28284 to Katherine Wilkins (Respondent). The
23 Marriage and Family Therapist License was in full force and effect at all times relevant to the
24 charges brought herein and will expire on August 31, 2012, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4982 states:

2 "The board may deny a license or registration or may suspend or revoke the license or
3 registration of a licensee or registrant if he or she has been guilty of unprofessional conduct.
4 Unprofessional conduct includes, but is not limited to, the following:

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

20 "(b) Securing a license or registration by fraud, deceit, or misrepresentation on any
21 application for licensure or registration submitted to the board, whether engaged in by an
22 applicant for a license or registration, or by a licensee in support of any application for licensure
23 or registration.

24 "(c) Administering to himself or herself any controlled substance or using of any of the
25 dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a
26 manner, as to be dangerous or injurious to the person applying for a registration or license or
27 holding a registration or license under this chapter, or to any other person, or to the public, or, to
28 the extent that the use impairs the ability of the person applying for or holding a registration or

1 license to conduct with safety to the public the practice authorized by the registration or license.
2 The board shall deny an application for a registration or license or revoke the license or
3 registration of any person, other than one who is licensed as a physician and surgeon, who uses or
4 offers to use drugs in the course of performing marriage and family therapy services.

5 . . ."

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

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

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

17
18 DRUGS

19 8. Vicodin®, Lortab®, Lorcet®, and Norco® are brand names for compounds of
20 varying dosages of acetaminophen and hydrocodone bitartrate, a Schedule III controlled
21 substance as designated by Health and Safety Code section 11056(e)(4) and a dangerous drug as
22 designated by Business and Professions Code section 4022, used for pain relief.

23
24 FIRST CAUSE FOR DISCIPLINE
25 (CRIMINAL CONVICTION)

26 9. Respondent is subject to disciplinary action under sections 4982(a) and/or 490 in that
27 on or about May 16, 2008, in a criminal proceeding entitled *The People of the State of California*
28 *v. Katherine Otterson Wilkins*, in Santa Clara County Superior Court, Case Number BB831478,

1 Respondent was convicted by her plea of nolo contendere of violating Vehicle Code section
2 23102(a) (reckless driving). Respondent was sentenced to probation for two years, ordered to
3 complete a first offender program, and ordered to pay fines and fees in the amount of \$1,042.50.
4 The circumstances were that on or about December 7, 2007, Respondent was arrested after hitting
5 a parked car at 500 Forrest Avenue in Palo Alto, California. Respondent failed field sobriety
6 tests, and reported to the arresting officer that she had taken Norco approximately one hour prior
7 to the collision.

8
9 SECOND CAUSE FOR DISCIPLINE

10 (ADMINISTERING NARCOTICS IN A MANNER DANGEROUS TO SELF OR OTHERS)

11 10. Respondent is subject to disciplinary action under section 4982(c) in that on or about
12 December 7, 2007, Respondent was arrested after hitting a parked car at 500 Forrest Avenue in
13 Palo Alto, California. Respondent failed field sobriety tests, and reported to the arresting officer
14 that she had taken Norco approximately one hour prior to the collision.

15
16 THIRD CAUSE FOR DISCIPLINE

17 (FAILURE TO DISCLOSE CONVICTION ON RENEWAL APPLICATION)

18 11. Respondent is subject to disciplinary action under section 4982(b) in that on or about
19 June 6, 2008, Respondent failed to disclose on her renewal application that she had been
20 convicted of reckless driving, as stated above in paragraph 9.

21
22 PRAYER

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

25 1. Revoking or suspending Marriage and Family Therapist License Number MFC
26 28284, issued to Katherine Wilkins;

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2. Ordering Katherine Wilkins 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: July 14, 2011



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

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