

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

In the Matter of the Statement of Issues
Against:

MELISSA ANN MENDEZ

Respondent.

Case No. 200 2014 000330

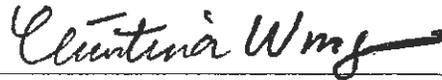
OAH No. 2014120321

DECISION AND ORDER

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

This Decision shall become effective on June 17, 2015.

It is so ORDERED May 18, 2015.



FOR THE BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
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2 JOSHUA A. ROOM
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7
8 **BEFORE THE**
BOARD OF BEHAVIORAL SCIENCES
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues
11 Against:

12 **MELISSA ANN MENDEZ**

13 Respondent.

Case No. 200 2014 000330

OAH No. 2014120321

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

14
15
16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
17 entitled proceedings that the following matters are true:

18 PARTIES

19 1. Kim Madsen (Complainant) is the Executive Officer of the Board of Behavioral
20 Sciences. She brought this action solely in her official capacity and is represented in this matter
21 by Kamala D. Harris, Attorney General of the State of California, by Brett A. Kingsbury, Deputy
22 Attorney General.

23 2. Respondent Melissa Ann Mendez (Respondent) is represented in this proceeding by
24 attorney Frank Ubhaus, whose address is: Frank Ubhaus;10 Almaden Blvd., 11th Floor; San
25 Jose, CA 95113.

26 3. On or about September 27, 2013, Respondent filed an application dated September 1,
27 2013, with the Board of Behavioral Sciences to obtain a Marriage and Family Therapist Intern
28 Registration.

1 DISCIPLINARY ORDER

2 IT IS HEREBY ORDERED that Respondent Melissa Ann Mendez be issued a Registration
3 as a Marriage and Family Therapist Intern and that said Registration shall be immediately
4 revoked. The revocation will be stayed and the Respondent placed on five (5) years probation on
5 the following terms and conditions. Probation shall continue on the same terms and conditions if
6 Respondent is issued a subsequent registration, becomes licensed, or is granted another license or
7 registration regulated by the Board during the probationary period.

8 **1. Psychological/ Psychiatric Evaluation**

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

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

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

25 If respondent is determined to be unable to practice independently and safely, upon
26 notification, respondent shall immediately cease practice and shall not resume practice until
27 notified by the Board or its designee. Respondent shall not engage in any practice for which a
28 license issued by the Board is required, until the Board or its designee has notified the respondent

1 of its determination that respondent may resume practice.

2 If determined to be warranted by the evaluator, Respondent shall participate in ongoing
3 psychotherapy with a California licensed mental health professional who has been approved by
4 the Board, and the remainder of this probationary term shall be added to the disciplinary order:

5 Within 15 days of being notified by the board of this requirement, respondent shall submit
6 to the Board or its designee for its prior approval the name and qualifications of one or more
7 therapists of respondent's choice. Such therapist shall possess a valid California license to
8 practice and shall have had no prior business, professional, or personal relationship with
9 respondent, and shall not be the respondent's supervisor. Counseling shall be at least once a week
10 unless otherwise determined by the Board. Respondent shall continue in such therapy at the
11 Board's discretion. Cost of such therapy is to be borne by respondent.

12 Respondent may, after receiving the Board's written permission, receive therapy via
13 videoconferencing if respondent's good faith attempts to secure face-to-face counseling are
14 unsuccessful due to the unavailability of qualified mental health care professionals in the area.
15 The Board may require that respondent provide written documentation of her good faith attempts
16 to secure counseling via videoconferencing.

17 Respondent shall provide the therapist with a copy of the Board's decision no later than the
18 first counseling session. Upon approval by the Board, respondent shall undergo and continue
19 treatment until the Board or its designee determines that no further psychotherapy is necessary.

20 Respondent shall take all necessary steps to ensure that the treating psychotherapist submits
21 quarterly written reports to the Board concerning respondent's fitness to practice, progress in
22 treatment, and to provide such other information as may be required by the Board. Respondent
23 shall execute a Release of Information authorizing the therapist to divulge information to the
24 Board.

25 If the treating psychotherapist finds that respondent cannot practice safely or independently,
26 the psychotherapist shall notify the Board within three (3) working days. Upon notification by
27 the Board, respondent shall immediately cease practice and shall not resume practice until
28 notified by the Board or its designee that respondent may do so. Respondent shall not thereafter

1 engage in any practice for which a license/ registration issued by the Board is required until the
2 Board or its designee has notified respondent that she may resume practice. Respondent shall
3 document compliance with this condition in the manner required by the Board.

4 **2. Attend Dependency Support Program**

5 Respondent shall attend a dependency support program approved by the Board no less than
6 2 (two) times per week. Respondent shall provide proof of attendance at said program with each
7 quarterly report that Respondent submits during the period of probation. Failure to attend, or to
8 show proof of such attendance, shall constitute a violation of probation.

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

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

13 Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon
14 request by the Board or its designee. The length of time and frequency will be determined by the
15 Board. There will be no confidentiality in test results. Any confirmed positive finding will be
16 immediately reported to respondent's current employer and shall be a violation of probation. At
17 any hearing to revoke probation, a confirmed positive finding may be proven by the receipt by the
18 Board of a test result, alone, without further evidence substantiating or proving the validity of the
19 result.

20 **4. Abstain from Use of Alcohol / Submit to Biological Fluid Testing and Samples**

21 Respondent shall completely abstain from the use of alcoholic beverages during the period
22 of probation.

23 Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon
24 request by the Board or its designee. The length of time and frequency will be determined by the
25 Board. There will be no confidentiality in test results. Any confirmed positive finding will be
26 immediately reported to the respondent 's current employer and shall be a violation of probation.
27 At any hearing to revoke probation, a confirmed positive finding may be proven by the receipt by
28 the Board of a test result, alone, without further evidence substantiating or proving the validity of

1 the result.

2 **5. Education**

3 Respondent shall take and successfully complete the equivalency of 2 semester units in the
4 area of alcohol use/abuse. All course work shall be taken at the graduate level at an accredited or
5 approved educational institution that offers a qualifying degree for licensure as a marriage and
6 family therapist, clinical social worker, educational psychologist, or professional clinical
7 counselor or through a course approved by the Board. Classroom attendance must be specifically
8 required. Course content shall be pertinent to the violation and all course work must be
9 completed within one year from the effective date of this Decision.

10 Within 90 days of the effective date of the decision respondent shall submit a plan for prior
11 Board approval for meeting these educational requirements. All costs of the course work shall be
12 paid by the respondent. Units obtained for an approved course shall not be used for continuing
13 education units required for renewal of licensure.

14 **6. Obey All Laws**

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

23 **7. File Quarterly Reports**

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

1 **8. Comply with Probation Program**

2 Respondent shall comply with the probation program established by the Board and
3 cooperate with representatives of the Board in its monitoring and investigation of the respondent's
4 compliance with the program.

5 **9. Interviews with the Board**

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

8 **10. Failure to Practice**

9 In the event respondent stops practicing in California, respondent shall notify the Board or
10 its designee in writing within 30 calendar days prior to the dates of non-practice and return to
11 practice. Non-practice is defined as any period of time exceeding thirty calendar days in which
12 respondent is not engaging in any activities defined in Sections 4980.02, 4989.14, 4996.9, or
13 4999.20 of the Business and Professions Code. Any period of non-practice, as defined in this
14 condition, will not apply to the reduction of the probationary term and will relieve respondent of
15 the responsibility to comply with the probationary terms and conditions with the exception of this
16 condition and the following terms and conditions of probation: Obey All Laws; File Quarterly
17 Reports; Comply With Probation Program; Maintain Valid License/Registration; and Cost
18 Recovery. Respondent's license/registration shall be automatically cancelled if respondent's
19 period of non-practice total two years.

20 **11. Change of Place of Employment or Place of Residence**

21 Respondent shall notify the Board or its designee in writing within 30 days of any change
22 of place of employment or place of residence. The written notice shall include the address, the
23 telephone number and the date of the change.

24 **12. Supervision of Unlicensed Persons**

25 While on probation, respondent shall not act as a supervisor for any hours of supervised
26 practice required for any license or registration issued by the Board. Respondent shall terminate
27 any such supervisory relationship in existence on the effective date of this Decision.

28 ///

1 **13. Notification to Clients**

2 Respondent shall notify all clients when any term or condition of probation will affect their
3 therapy or the confidentiality of their records, including but not limited to supervised practice,
4 suspension, or client population restriction. Such notification shall be signed by each client prior
5 to continuing or commencing treatment. Respondent shall submit, upon request by the Board or
6 its designee, satisfactory evidence of compliance with this term of probation.

7 **14. Notification to Employer**

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

14 **15. Violation of Probation**

15 If respondent violates the conditions of her probation, the Board, after giving respondent
16 notice and the opportunity to be heard, may set aside the stay order and impose the discipline
17 (revocation/suspension) of respondent 's registration provided in the decision.

18 If during the period of probation, an accusation, petition to revoke probation, or statement
19 of issues has been filed against respondent's registration or application for licensure, or the
20 Attorney General's office has been requested to prepare such an accusation, petition to revoke
21 probation, or statement of issues, the probation period set forth in this decision shall be
22 automatically extended and shall not expire until the accusation, petition to revoke probation, or
23 statement of issues has been acted upon by the board. Upon successful completion of probation,
24 respondent's registration shall be fully restored.

25 **16. Maintain Valid Registration/License**

26 Respondent shall, at all times while on probation, maintain a current and active license or
27 registration with the Board, including any period during which suspension or probation is tolled.
28 Should respondent's license or registration, by operation of law or otherwise, expire, upon

1 renewal respondent's license or registration shall be subject to any and all terms of this probation
2 not previously satisfied.

3 **17. Registration/License Surrender**

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

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

22 **18. Instruction of Coursework Qualifying for Continuing Education**

23 Respondent shall not be an instructor of any coursework for continuing education credit
24 required by any license/ registration issued by the Board.

25 **19. Notification to Referral Services**

26 Respondent shall immediately send a copy of this decision to all referral services registered
27 with the Board in which respondent is a participant. While on probation, respondent shall send a
28 copy of this decision to all referral services registered with the Board that respondent seeks to

1 join.

2 20. Reimbursement of Probation Program

3 Respondent shall reimburse the Board for the costs it incurs in monitoring the probation to
4 ensure compliance for the duration of the probation period. Reimbursement costs shall be
5 \$1,200.00 per year.

6 ACCEPTANCE

7 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
8 discussed it with my attorney, Frank Ubhaus, Esq. I understand the stipulation and the effect it
9 will have on my Marriage and Family Therapist Intern Registration. I enter into this Stipulated
10 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
11 bound by the Decision and Order of the Board of Behavioral Sciences.

12
13 DATED: 4/8/2015 
14 MELISSA ANN MENDEZ
15 Respondent

16 I have read and fully discussed with Respondent Melissa Ann Mendez the terms and
17 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
18 I approve its form and content.

19
20 DATED: 04/09/2015 
21 Frank Ubhaus
22 Attorney for Respondent

22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 join.

2 **20. Reimbursement of Probation Program**

3 Respondent shall reimburse the Board for the costs it incurs in monitoring the probation to
4 ensure compliance for the duration of the probation period. Reimbursement costs shall be
5 \$1,200.00 per year.

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9 will have on my Marriage and Family Therapist Intern Registration. I enter into this Stipulated
10 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
11 bound by the Decision and Order of the Board of Behavioral Sciences.

12
13 DATED: _____
14 MELISSA ANN MENDEZ
15 Respondent

16 I have read and fully discussed with Respondent Melissa Ann Mendez the terms and
17 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
18 I approve its form and content.

19
20 DATED: _____
21 Frank Ubhaus
22 Attorney for Respondent

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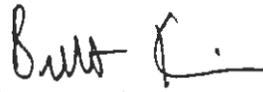
ENDORSEMENT

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

Dated: 4/17/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOSHUA A. ROOM
Supervising Deputy Attorney General



BRETT A. KINGSBURY
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 200 2014 000330

1 KAMALA D. HARRIS
Attorney General of California
2 JOSHUA A. ROOM
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8 **BEFORE THE**
BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues
11 Against:

Case No. 200 2014 000 330

12 **MELISSA ANN MENDEZ**

STATEMENT OF ISSUES

13 Respondent.

14
15
16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about September 27, 2013, the Board of Behavioral Sciences (Board),
22 Department of Consumer Affairs received an application for registration as a Marriage and
23 Family Therapist from Melissa Ann Mendez (Respondent). On or about September 1, 2013,
24 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
25 representations in the application. The Board denied the application on April 18, 2014.

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1 duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the
2 meaning of this section. The board may order any license or registration suspended or revoked, or
3 may decline to issue a license or registration when the time for appeal has elapsed, or the
4 judgment of conviction has been affirmed on appeal, or, when an order granting probation is
5 made suspending the imposition of sentence, irrespective of a subsequent order under Section
6 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
8 indictment.

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 The board shall deny an application for a registration or license or revoke the license or
17 registration of any person, other than one who is licensed as a physician and surgeon, who uses or
18 offers to use drugs in the course of performing marriage and family therapy services.

19 "...."

20 6. Section 118, subdivision (a), of the Code states:

21 "The withdrawal of an application for a license after it has been filed with a board in the
22 department shall not, unless the board has consented in writing to such withdrawal, deprive the
23 board of its authority to institute or continue a proceeding against the applicant for the denial of
24 the license upon any ground provided by law or to enter an order denying the license upon any
25 such ground."

26 ///

27 ///

28 ///

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Criminal Conviction)**

3 7. Respondent's application is subject to denial under sections 480, subdivision (a)(1),
4 and 4982, subdivision (a), of the Code in that Respondent was convicted of a crime substantially
5 related to the qualifications, functions, or duties of a licensee.

6 8. On or about February 1, 2007, in the Superior Court of California for the County of
7 Santa Clara, in the case entitled *The People of the State of California v. Melissa Ann Mendez*
8 *(8/17/1987)*, Case No. BB623997, Respondent pled no contest to and was convicted of violating
9 California Vehicle Code section 23152, subdivision (b) (driving with blood alcohol greater than
10 .08%), a misdemeanor, with an enhancement under California Vehicle Code section 23578 for
11 blood alcohol greater than .15%. The circumstances of the conviction were that on or around
12 November 18, 2006, Respondent drove her vehicle while intoxicated, ran a stop sign, and
13 exceeded permissible speed limits. A blood alcohol test performed by police indicated
14 Respondent's blood alcohol to be .17%.

15 9. On or about April 16, 2009, in the Superior Court of California for the County of
16 Santa Clara, in the case entitled *The People of the State of California v. Melissa Ann Mendez*
17 *(8/17/1987)*, Case No. BB836342, Respondent pled no contest to and was convicted of violating
18 California Vehicle Code section 23152, subdivision (b) (driving with blood alcohol greater than
19 .08%), a misdemeanor, with an enhancement under California Vehicle Code section 23578 for
20 blood alcohol greater than .15%, and with one prior offense. The circumstances of the conviction
21 were that on or around August 21, 2008, Respondent was approached by police while sitting in
22 her vehicle, having pulled over to talk with her passenger. Respondent's car was parked in such a
23 way that it partially blocked the road and, when interviewed by police, Respondent was
24 discovered to be intoxicated. A subsequent test indicated Respondent's blood alcohol level to be
25 .24%.

26 10. On or about June 29, 2010, in the Superior Court of California for the County of
27 Santa Clara, in the case entitled *The People of the State of California v. Melissa Ann Mendez*
28 *(8/17/1987)*, Case No. C1076175, Respondent pled guilty to and was convicted of violating

1 California Vehicle Code section 20002, subdivision (a) (hit and run). The circumstances of the
2 conviction were that on or around April 28, 2010, while driving her vehicle, Respondent rear-
3 ended another vehicle and fled the scene.

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 **(Dangerous Use of Alcohol)**

6 11. Respondent's application is subject to denial under sections 480, subdivision
7 (a)(3)(A), and 4982, subdivision (c), in that Respondent used alcohol in a manner dangerous to
8 herself, to another, or to the public. The circumstances are described above in the First Cause for
9 Discipline.

10 **PRAYER**

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

- 13 1. Denying the application of Melissa Ann Mendez for a Marriage and Family Therapist
14 Registration;
- 15 2. Taking such other and further action as is deemed necessary and proper.

16 DATED: July 29, 2014



17 KIM MADSEN
18 Executive Officer
19 Board of Behavioral Sciences
20 Department of Consumer Affairs
21 State of California
22 Complainant

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