

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

In the Matter of the Petition to Revoke
Probation Against:

Sharon Leslie Bain,

Respondent.

CASE No. 2002014001296

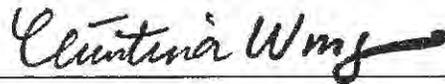
OAH No. 2014071027

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Behavioral Sciences, Department of Consumer Affairs, State of California, as the Decision in the above-entitled matter.

This Decision shall become effective on March 20, 2015.

IT IS SO ORDERED February 18, 2015.



FOR THE BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS

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AMENDED PROPOSED DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on November 17, 2014, in San Diego, California.

Nicole R. Trama, Deputy Attorney General, Department of Justice, State of California, represented complainant, Kim Madsen, Executive Officer, Board of Behavioral Sciences, Department of Consumer Affairs, State of California.

Sharon Leslie Bain, respondent, represented herself.

The matter was submitted on November 17, 2014.

This Amended Proposed Decision modifies the Proposed Decision dated December 17, 2014, to correct the misspelling of Phamatech Laboratory; replace the word “license” with “registration” at page 8; clarify that respondent was a therapist intern at page 8; define the registration at issue as a Marriage and Family Therapist Intern registration in the Order; and clarify at page 9 that respondent is to continue to participate in therapy. The modifications do not materially alter the Proposed Decision.

FACTUAL FINDINGS

2013 Stipulated Settlement and Order of Probation

1. In August 2012, respondent filed an application with the Board of Behavioral Sciences (board) to obtain a Marriage and Family Therapist Intern Registration. Her application was denied and a Statement of Issues was filed with the board. The Statement of Issues requested that the board’s denial of respondent’s application be upheld because

respondent was convicted of two misdemeanor offenses involving driving under the influence of drugs and/or alcohol – one in 2005 and another in 2011. The Statement of Issues also alleged that respondent used controlled substances and/or dangerous drugs in a manner as to be dangerous to herself or the public.

2. On May 21, 2013, respondent signed a Stipulated Settlement and Disciplinary Order (order) in which she admitted the truth of “each and every charge and allegation” in the Statement of Issues. Under the terms of the order, respondent was granted a Marriage and Family Therapist Intern Registration; the registration was immediately revoked; the order of revocation was stayed; and respondent’s registration was placed on five years’ probation. The terms and conditions of probation included that respondent complete a psychological evaluation, participate in ongoing psychotherapy, attend a dependency support program, abstain from controlled substances unless prescribed by a medical practitioner, and abstain from the use of alcohol. To ensure respondent complied with the requirement that she abstain from the use of drugs and alcohol, she was required to submit to random biological fluid testing. The order provided that any “confirmed positive findings will be immediately reported to Respondent’s current employer and shall be a violation of probation.”

3. The order was adopted by the board; it became effective on August 21, 2013.

4. On August 21, 2013, the board issued to respondent Marriage and Family Therapist Intern Registration Number IMF 76222. Respondent’s registration was renewed and is active until August 31, 2015.

Petition to Revoke Probation

5. Respondent began participating in the biological fluid testing program administered by Phamatech, Inc. in September 2013.

6. On April 14, 2014, respondent provided biological fluid for testing as required by the terms of her probation. Her sample tested positive for Ethyl Glucuronide (alcohol).

7. On April 28, 2014, Julie Mc Auliffe, a Probation Analyst with the board, issued a Violation Letter in which she notified respondent that the fluid sample she provided on April 14, 2014, tested positive for alcohol. Ms. McAuliffe told respondent she had five days to provide a “written detailed explanation for the positive result”

8. By letter dated May 1, 2014, respondent acknowledged receipt of the Violation Letter. She denied that she had consumed alcoholic beverages and wrote that she “could not understand why the test would show these results.” Respondent offered a variety of possible reasons why she believed the test was a false positive, and indicated that she was waiting for responses to other inquiries she had made to see if dietary changes could have caused the positive result. Respondent stated that she had recently begun a Medifast program; that she had eaten lamb chops marinated in wine; and that she used a skin cream that contained alcohol components. Respondent further noted that she had an appointment

with her therapist on the same day that the sample was taken, and that she had contacted her therapist to describe her observations of respondent that day.

9. On May 15, 2014, respondent sent another letter to Ms. McAuliffe regarding the positive test results. Respondent again stressed that she had not consumed any alcoholic beverages. In addition to what she mentioned in her first letter, respondent wrote that, on one of her test dates her urine appeared to be a dark orange color. A separate test ordered by her doctor showed that respondent had blood in her urine. Respondent added that she had stomach pain on April 14, 2014. A separate test on that date similarly indicated that she had blood in her urine. Respondent also offered that she had used another skin cream which she did not believe could result in a positive test, but which she shared in an attempt at full disclosure. Respondent again suggested that a change in her diet, including the use of Medifast products, could have caused a false positive result on April 14, 2014.

10. By certified letter dated May 16, 2014, complainant notified respondent that, because she had tested positive for alcohol, she was ordered to “cease practice as a Marriage and Family Therapist Intern effective immediately” Complainant advised respondent that the positive result was a violation of probation and that a petition to revoke her probation would be filed.

11. On July 10, 2014, complainant signed the Petition to Revoke Probation in respondent’s case.

Evidence Relating to the Analysis of the Fluid Testing

KEN KODAMA

12. Ken Kodoma received a Bachelor of Science degree in microbiology from San Diego State University in 1983. He has over twenty years of supervisory and management experience in the forensic drug testing industry. He is the Laboratory Director of Phamatech, Inc., the laboratory that analyzed respondent’s urine sample. As Director, Mr. Kodoma oversees the day to day operations of Phamatech. Phamatech currently performs 5,000 drug screens per day. He has served as an expert in the interpretation of drug screen results and has testified in at least twelve cases. Phamatech is used by parole and probation agencies, the federal government, and the Department of Transportation to perform drug tests and is certified by the federal government and many states. Quality assurance tests to maintain the various licenses held by Phamatech are rigorous.

DRUG SCREENING PROCESS

13. Each biological sample taken is given an unique identification number and transported to the laboratory in a tamper evident sealed container. If the seal on the container is broken or if the identification number does not match the seal, the sample will not be processed. The first test performed on a sample is an immunoassay screening test. For this test, a small portion of the sample, called an “aliquot”, is poured into a test tube coded with the unique identification number assigned to the sample. A scanning system in the testing

area confirms the identification of the sample being tested. The immunoassay test uses antibodies that react if certain drugs are present. The samples are run through an automated system of instruments that are calibrated for each sample tested and are programmed with predetermined "cutoffs." If the immunoassay test fails to detect the presence of drugs in the sample, or if the amount detected is below the cutoff, a negative report is generated and no further tests are performed. If the test detects substances in an amount in excess of the cutoff, the result is positive.

When the immunoassay test gives a positive result for the presence of one or more drugs, an additional test is performed. Another aliquot is poured from the original sample into a clean, coded test tube. The aliquot is then tested by liquid chromatography mass spectrometry (LC/MS). The LC/MS test identifies the specific substance that triggered a positive result in the immunoassay screening test and provides a calculation of the quantity of the drug present in the sample. A positive result is reported only if both tests have a positive result.

As is standard in the industry, the aliquots used in the specimen analysis are disposed of after testing. Specimen bottles that contain enough of the sample to run additional tests are maintained for one year. If, after running the two tests, an insufficient quantity of the biological fluid remains, the containers are discarded.

RESULTS OF RESPONDENT'S APRIL 14 DRUG SCREENING

14. Respondent's sample collected on April 14, 2014, tested positive for ethyl glucuronide (EtG or alcohol) on both tests.¹ The amount of EtG was 9670 nanogram per milliliter (ng/ml) where the cutoff was 100 ng/ml. The positive result was reported by Phamatech to the board.

15. Mr. Kodama was aware that respondent had requested Phamatech to provide her with the remaining sample so that she could have it independently re-tested. However, Mr. Kodama testified that the laboratory used three aliquots to conduct the tests on respondent's biological sample and there was none remaining to provide to respondent. He stated that the laboratory has no control over the amount of the sample collected. Mr. Kodama noted that Phamatech had to dilute respondent's sample to perform its last test because there was insufficient sample to otherwise perform the test. In accordance with its policies, Phamatech disposed of the empty container that had held respondent's sample. Mr. Kodama testified that the container was disposed of before Phamatech received a request from respondent to provide any remaining sample for re-testing.

THOMAS G. AUCOIN, PH.D.

¹ The initial screen tested positive for benzodiazepines, but the confirmation test was negative because the amount of benzodiazepines was below the cutoff. According to its policies, Phamatech reported a negative finding for benzodiazepines.

16. Thomas G. Aucoin, Ph.D. received a Bachelor of Art degree in biology/chemistry from Point Loma College in 1983, a Master of Science Degree in forensic chemistry from Northeastern University in 1986, and a doctor of Philosophy degree in biomedical science from Northeastern University in 1990. He has over twenty years of experience in the forensic drug testing industry. He is the Vice President of Laboratory Operations of Phamatech, Inc. He has overseen “tens of millions” of forensic drug tests; when he worked for Laboratory Corporation of America they performed 33,000 drug tests per day. He is certified by the federal government as an expert witness and has served as an expert in approximately 500 cases.

Dr. Aucoin testified about the Phamatech drug testing program as it applied to persons subject to a random drug testing requirement as a condition of maintaining an occupational license. He explained that when the licensee enrolls in a Phamatech drug testing program he or she is given a unique password. The licensee is required to call a special Phamatech telephone number daily and enter his or her password. The licensee is notified when he or she is required to provide a sample for a drug test. The day the licensee is required to appear for a drug test is randomly determined by a computer. The frequency in which a licensee could be required to provide a sample is determined by the agency involved.

Each participant in the drug testing program is provided a comprehensive information packet describing the participant’s responsibilities. The information packet includes a list of products that the participant should avoid because they could cause incidental exposure to prohibited substances which could result in a positive test result. Phamatech maintains a website available to participants 24 hours a day, 7 days a week that includes information about the drug testing program and items to avoid.

Dr. Aucoin reviewed the results of respondent’s April 14, 2014, test and opined that the amount of ethyl alcohol detected in respondent’s sample was “a significant quantity.” Dr. Aucoin testified that there was no medical explanation that could account for the result obtained by respondent’s test. He stated that while diabetes can create ethyl alcohol in the urine, the EtG found in respondent’s urine could only be obtained by ingesting alcohol. Dr. Aucoin noted that, although substances such as soy sauce or vanilla extract contain ethyl alcohol, an excessively large amount of those substances would have to be ingested to obtain the positive result as determined in respondent’s test. Dr. Aucoin testified that soaps or creams applied to the skin could not provide a false positive result for ethyl alcohol because only metabolized alcohol, alcohol that was ingested, is detected in the tests administered by Phamatech. The alcohol in wine that is added to foods is “cooked off” when the foods are subject to the heat of cooking. The only conclusion that Dr. Aucoin could draw from respondent’s test results was that she ingested ethyl alcohol.

Administration of Probation

17. Julie McAuliffe has been employed by the board for 21 years; she has been a Probation Analyst for seven years. She was assigned to monitor respondent’s compliance with the terms and conditions of her probation. Ms. McAuliffe stated that respondent was

working as an intern to get hours towards licensure as a marriage and family therapist and, as an intern, worked under supervision.

Thirty days before the effective date of the board's decision to place respondent on probation, Ms. McAuliffe sent a probation packet to respondent. The packet contained information about the Phamatech drug testing program respondent was required to enroll in. In addition to an introductory letter, Ms. McAuliffe had a telephone conversation with respondent in which she explained in detail the drug testing procedures and requirements. Ms. McAuliffe warned respondent about using products on the restricted list that could cause a positive result. Ms. McAuliffe advised respondent that a comprehensive list of restricted products was available on Phamatech's website.

Respondent's Evidence

SHARON BAIN

18. Respondent was a deputy sheriff for eighteen years until an injury forced her to retire. Despite her injury, respondent wanted to be in a profession in which she would be able to help people. She obtained a Bachelor of Arts degree from Biola University and attended Southern California Seminary where she studied marriage and family therapy.

Respondent had criminal convictions in 2005 and 2011. She testified that her 2011 conviction for driving under the influence of drugs resulted from a negative reaction to prescribed Ambien, which she ceased taking after the incident. Respondent successfully completed her criminal probation in both cases. On July 9, 2014, and August 5, 2014, respondent's motions for dismissal under Penal Code section 1203.4 were granted; the convictions in her two prior criminal cases were set aside; pleas of not guilty were entered; and the cases were dismissed. She disclosed her convictions to the board in her application.

Respondent adamantly denied she had ingested alcohol prior to her April 2014 drug test. She stated that if she had ingested alcohol she would not have appeared for the test but would have said she was ill. Respondent testified that she ate lamb chops she had marinated in wine. She stated that she did not think using wine in food that would be cooked could cause a problem with her drug testing, but she also said that she did not look at the list of items to avoid that were provided to her by the board and which she had access to through Phamatech. Respondent also stated that she believed she used vanilla extract and soy sauce in cooking.

Respondent earnestly sought to have the urine sample from the April 2014 test retested by another laboratory. From May 23 to August 30, 2014, respondent made at least thirteen requests to have the sample retested. In an email dated September 9, 2014, Mr. Kodama advised the board's counsel that a retest of the specimen was not possible because "there [was] insufficient specimen volume to provide for the required testing." Respondent, nonetheless, requested whatever was left so that an independent laboratory could make the determination of whether they could perform a test on the remaining sample. On October 1, 2014, respondent was advised that the container that held her specimen had been destroyed.

Email communication between Phamatech and the board's counsel initially suggested that Phamatech had respondent's specimen and was taking steps to have it transferred to Quest Diagnostics Laboratory for re-testing. One month later, however, Phamatech advised that it did not have any of the sample and that the container holding the sample was destroyed.

Respondent requested that the Petition to Revoke Probation be dismissed because she was denied the opportunity to defend the allegations since she was unable to have the specimen retested.

Respondent understood the board's concern that the test suggested she had been drinking alcohol, but she adamantly denied that she had ingested alcohol on or before April 14, 2014. She stated she learns from her experiences and uses her experiences to help others. Respondent was working as an intern in an unpaid position when she was required to cease and desist by the board. She loves her work and is very careful about any prescribed medications that she takes. She did not want to jeopardize a career she loves or jeopardize anyone else. She is continuing to participate in random drug tests.

LEGAL CONCLUSIONS

1. The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical board of California* (1995) 38 Cal.App.4th 810, 817.)

2. A board is required to prove the allegations in a petition to revoke probation by a preponderance of the evidence. (*Sandarg v. Dental board of California* (2010) 184 Cal.App.4th 1434, 1441.) The phrase "preponderance of evidence" is usually defined in terms of probability of truth, e.g., such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth. (*Utility Consumers' Action Network v. Public Utilities Commission of State of California* (2010) 187 Cal.App.4th 688, 698-699.)

3. Condition 6 of the Disciplinary Order set forth in the Stipulated Settlement and Disciplinary Order that respondent signed on May 21, 2013, which became effective on August 21, 2013, provides:

Abstain from Use of Alcohol / Submit to Biological Fluid Testing and Samples. Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the board or its designee. The length of time and frequency will be determined by the board. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the

Respondent's current employer and shall be a violation of probation.

4. Condition 18 of the of the Disciplinary Order provides that if respondent was found to have violated the terms and conditions of probation, the board could set aside the stay of its order revoking respondent's registration and revoke her registration.

5. Cause exists to revoke respondent's probation based upon the fact that she received a positive drug test result in violation of the terms and conditions of her probation. Several factors have been considered in determining whether revocation of respondent's registration is warranted or if the public can be protected by extending respondent's period of probation.

Respondent's probation began on August 21, 2013, and was to continue for five years, until 2018. Respondent had participated in random drug testing for seven months when she obtained a positive test result for the ingestion of alcohol. The testing of respondent's specimen was performed by a highly qualified and reputable laboratory. However, although respondent ardently attempted to obtain the sample so that it could be re-tested, she was unable to do so. Her expressions of surprise and shock that she tested positive for alcohol were sincere. Respondent testified that she was continuing to undergo drug testing, but she did not provide documentation of the results of her continued testing. Respondent works under supervision and there was no evidence that respondent had performance problems at work. Respondent has been unable to practice as a marriage and family therapist intern in excess of six months.

Based upon the totality of the circumstances, it is found that the public will be protected if respondent's probation is extended for a five year period commencing on the effective date of this decision under the same terms and conditions as in the August 2013 Disciplinary Order. Respondent is put on notice that another violation of probation will subject her registration to additional discipline. It is noted that the original terms and conditions of probation required respondent to undergo psychological evaluation, to submit a written report of the evaluation to the board, to submit the name and qualification of a psychotherapist with whom respondent will participate in psychotherapy, and to submit a plan for prior board approval for meeting certain educational requirements within the first few months of probation. No evidence was presented that respondent failed to comply with these requirements and, for that reason, the terms of extended probation relating to those items have been modified.

ORDER

Marriage and Family Therapist Intern Registration Number IMF 76222 issued to respondent Sharon Leslie Bain is revoked. The revocation will be stayed and respondent placed on five years' probation with the terms and conditions listed below. Each condition of probation set forth hereafter is a separate and distinct condition. Probation shall continue

on the same terms and conditions if respondent is issued a subsequent registration or becomes licensed during the probationary period.

1. Psychological Evaluation. On a periodic basis 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.

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.

2. Psychotherapy. Respondent shall continue to participate in ongoing psychotherapy with a California licensed mental health professional who has been approved by the board. Upon request, respondent shall submit to the board or its designee for its prior approval the name and qualifications of one or more therapists of respondent's choice. Such therapist shall possess a valid California license to practice and shall have had no prior business, professional, or personal relationship with respondent, and shall not be the respondent's supervisor. Counseling shall be at least once a week unless otherwise determined by the board. Respondent shall continue in such therapy at the board's discretion. Cost of such therapy is to be borne by respondent.

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

Respondent shall provide the therapist with a copy of the board's decision no later than the first counseling session. Upon approval by the board, respondent shall undergo and

continue treatment until the board or its designee determines that no further psychotherapy is necessary.

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

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

3. Education. Respondent shall take and successfully complete the equivalency of two semester units in drug use and abuse. All course work shall be taking at the graduate level at an accredited or approved educational institution that offers a qualifying degree for licensure as a marriage and family therapist, clinical social worker, education psychologist, or professional clinical counselor or through a course approved by the board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all course work must be completed within one year from the effective date of this Decision.

If not previously submitted, within 90 days of the effective date of the decision respondent shall submit a plan for prior board approval for meeting these educational requirements. All costs of the course work shall be paid by the respondent. Units obtained for an approved course shall not be used for continuing education units required for renewal of licensure.

4. Attend Dependency Support Program. Respondent shall attend a dependency support program no less than three (3) times per week. Respondent shall provide proof of attendance at said program with each quarterly report that respondent submits during the period of probation. Failure to attend, or to show proof of such attendance, shall constitute a violation of probation.

5. 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.

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the board or its designee. The length of time and frequency will be

determined by the board. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to respondent's current employer and shall be a violation of probation.

6. Abstain from Use of Alcohol / Submit to Biological Fluid Testing and Samples. Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon request by the board or its designee. The length of time and frequency will be determined by the board. The respondent is responsible for ensuring that reports are submitted directly by the testing agency to the board or its designee. There will be no confidentiality in test results. Any confirmed positive finding will be immediately reported to the respondent's current employer and shall be a violation of probation.

7. Reimbursement of Probation Program. Respondent shall reimburse the board for the costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period. Reimbursement costs shall be \$1,200.00 per year.

8. 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 or in compliance with probationary requirements. Respondent shall pay the cost associated with the fingerprint process.

9. 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 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.

10. 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.

11. 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.

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

Respondent's license or registration shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California total two years. However, respondent's license or registration 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.

13. 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.

14. 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.

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

16. 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.

17. 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 his or her license or registration, 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.

18. 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/suspension) of respondent's license or registration 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 or registration shall be fully restored.

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

20. Registration/License Surrender. Following the effective date of this decision, if respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily request the surrender of his/her license or registration 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 or registration to the board or its designee and respondent shall no longer engage in any practice for which a license or registration is required. Upon formal acceptance of the tendered license or registration, respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of respondent's license or registration 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 or

registration. Should respondent at any time after voluntary surrender ever reapply to the board for licensure or registration, respondent must meet all current requirements for licensure or registration 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.

21. Instruction of Coursework Qualifying for Continuing Education.

Respondent shall not be an instructor of any coursework for continuing education credit required by any license or registration issued by the board.

22. 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.

DATED: January 22, 2015.


SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Petition to Revoke
12 Probation Against,

Case No. 2002014001296

13 **SHARON LESLIE BAIN**
14 **23841 Humiston Way**
Ramona, CA 92065

PETITION TO REVOKE PROBATION

15
16 **Marriage and Family Therapist Intern**
Registration No. IMF 76222

17 Respondent.

18
19 Complainant alleges:

20 PARTIES

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

24 2. On or about August 21, 2013, the Board of Behavioral Sciences issued Marriage and
25 Family Therapist Intern Registration Number IMF 76222 to Sharon Leslie Bain (Respondent).

26 3. In a disciplinary action entitled "In the Matter of Statement of Issues Against Sharon
27 Leslie Bain," Case No. AP-2013-333, the Board of Behavioral Sciences issued a Decision,
28 effective August 21, 2013, in which it issued a Marriage and Family Therapist Intern Registration

1 to Respondent and then immediately revoked the Registration. However, the revocation was
2 stayed and Respondent's Marriage and Family Therapist Intern Registration was placed on
3 probation for a period of five years with certain terms and conditions. A copy of that Decision is
4 attached as Exhibit A and is incorporated by reference.

5 JURISDICTION

6 4. This Petition to Revoke Probation is brought before the Board of Behavioral Sciences
7 (Board), Department of Consumer Affairs, under the authority of the following laws.

8 5. This Petition to Revoke Probation is brought pursuant to Paragraph 18 of the
9 Disciplinary Order in Case No AP-2013-333 referenced in paragraph 3, which states:

10 **Violation of Probation.**

11 If Respondent violates the conditions of her probation, the Board, after giving
12 Respondent notice and the opportunity to be heard, may set aside the stay order
13 and impose the discipline (revocation/suspension) of Respondent's
14 registration/license provided in the decision.

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

23 FIRST CAUSE TO REVOKE PROBATION

24 (Failure to Abstain from the Use of Alcohol)

25 6. At all times after the effective date of Respondent's probation, Condition 6 stated:

26 **Abstain from Use of Alcohol / Submit to Biological Fluid Testing and 27 Samples.**

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

Respondent shall immediately submit to biological fluid testing, at
Respondent's cost, upon request by the Board or its designee. The length of time
and frequency will be determined by the Board. There will be no confidentiality in
test results. Any confirmed positive finding will be immediately reported to the
Respondent's current employer and shall be a violation of probation.

