

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

In the Matter of the Accusation Against:

NICOLE R. ANDREWS

Marriage and Family Therapist Intern,
Registration No. IMF 61922

Respondent.

Case No. : IM-2012-562

OAH No. : 2014030569

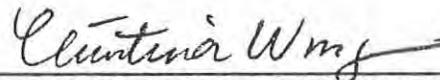
DECISION

Pursuant to Government Code section 11517(c)(2)(C), the attached Proposed Decision is hereby adopted by the Board of Behavioral Sciences in the above-entitled matter as the final Decision in the above-entitled matter with the following technical changes:

- (1) On Page 7, at the end of the 4th line in numbered paragraph 6, 4908.02 is changed to 4980.02;
- (2) On pages 8 and 9, numbered paragraphs 12 and 13, the word 'license' is replaced by 'license/registration' every time it occurs; and
- (3) On page 9, numbered paragraph 16, the word 'determined by the Board' is replaced by '\$1,200.00 per year'.

This Decision shall be effective on January 16, 2015.

It is so ORDERED December 17, 2014.



FOR THE BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Accusation Against:

NICOLE R. ANDREWS

Marriage and Family Therapist Intern
Registration No. IMF 61922 ,

Respondent.

Case No. IM-2012-562

OAH No. 2014030569

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge with the Office of Administrative Hearings, on September 18, 2014, in Los Angeles, California.

Christina Thomas, Deputy Attorney General, represented complainant.

Nicole R. Andrews (respondent) appeared personally and was represented by Damon L. Hobdy, Attorney at Law.

Evidence was introduced and the matter was submitted for decision. On October 6, 2014, the Administrative Law Judge reopened the record until October 16, 2014, to allow either party to submit a written statement attributed to respondent and a letter written by her therapist. Both letters were referenced in the investigative report (Exhibit 5). Neither party chose to submit the above referenced letters. A copy of the letter and the responses by the parties are marked collectively as Exhibit 6 and made part of the record. The record was closed and the matter was submitted for decision on October 16, 2014. The Administrative Law Judge makes the following findings, legal conclusions and order.

FACTUAL FINDINGS

1. Kim Madsen (complainant) made and filed the Accusation in her official capacity as the Executive Officer of the Board of Behavioral Sciences, Department of Consumer Affairs (Board).

2. On October 26, 2009, the Board issued Marriage and Family Therapist Intern Registration No. IMF 61922 to respondent.

3. On October 19, 2011, respondent entered a Costco store in Azusa, California, concealed some merchandise in her purse, and exited the store without paying for the merchandise. Respondent was detained by the store security officer who contacted the Azusa Police Department. Respondent was subsequently interviewed by the investigating police officer who arrested respondent for violating Penal Code section 484, subdivision (a), petty theft. When questioned by the arresting police officer, respondent admitted that she took the items without paying for them. She also stated that she did not enter the store with the intention of taking the items "but impulsively took them" once she saw them. After completing his investigation, the police officer arrested respondent for violating Penal Code section 484, subdivision (a), petty theft. Respondent's admission that she took the items without paying for them is corroborated by the hearsay statements in the police report attributed to the Costco security officer who detained respondent.¹ When asked on cross-examination what if anything in the police report was untrue, respondent denied making the statement attributed to her that "she took the items because she had not received her disability checks in two months." She did not deny any other part of the report.

4. On June 1, 2012, in the Superior Court of California, County of Los Angeles, respondent entered a plea of nolo contendere and the court made a finding of guilt. The court continued the sentencing to February 1, 2013, and ordered respondent to complete 10 days of community service. The court record states that upon completion of the community service, the court would reduce the charge to an infraction and dismiss the case. Respondent completed the community service and on February 1, 2013, the court, upon the prosecutor's motion, allowed respondent to withdraw her plea of nolo contendere and dismissed the case pursuant to Penal Code section 1385. This section provides that a "judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in the interests of justice, order an action to be dismissed."

5. Respondent established mitigation in that prior to committing the offense set forth in Factual Finding 3, respondent's father and brother were killed in an airplane crash. This had a profound emotional impact on respondent. She was able to cope for a period of time but then the accident took its toll and respondent developed emotional problems that resulted in dysfunctional behavior. In addition to committing the petty theft, respondent developed an eating disorder. She was later diagnosed with Anorexia Nervosa (Binge Eating/Purging Type) and entered a residential facility where she received therapy to address

¹ In *Lake v. Reed* (1997) 16 Cal.4th 448, the California Supreme Court held that information contained in a police investigative report is admissible in an administrative proceeding. The personal observations of the investigating officer and any admissions of the arrestee/respondent as set forth in the report are admissible for all purposes. Statements in a police report attributed to third parties are admissible for the purpose of explaining or supplementing other evidence pursuant to Government Code section 11513, subdivision (d).

her diagnosis and her emotional problems. Respondent completed the residential program but continued to receive outpatient therapy until May 2014.

6. Respondent now believes that she has addressed her past issues and is prepared to resume her path toward licensure. However, respondent did not present testimony or a report from a mental health professional corroborating her assertion that her emotional and mental health issues have been addressed.²

7. After respondent took steps to address her eating disorder and emotional problems, she performed quite well as an intern at Enki Health and Research Systems, as evidenced by her performance evaluations in 2012 and 2013.

8. Respondent is currently working as a hostess for a hotel in Alaska, where she earns minimum wage. She testified that she earns just enough money to buy food and to pay her rent and her student loans.

9. Pursuant to Business and Professions Code Section 125.3, complainant requests costs of prosecution of the matter in the amount of \$5,817.50. These costs are reasonable under section 125.3.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend respondent's Marriage and Family Therapist Intern Registration, under Business and Professions Code section 4982, subdivision (j), for committing an act of dishonesty as set forth in Factual Finding 3.

2. California Code of Regulations, title 16, section 1813, sets forth factors to evaluate rehabilitation of a licensee. This section states:

(a) When considering the suspension or revocation of a license, the board, in evaluating the rehabilitation of such person and his or her present eligibility for a license or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

² Complainant's Exhibit 5 is an investigative report written by Board Enforcement Analyst Gena Beaver. In her report, Ms. Beaver references an eight page letter submitted by respondent and a letter written by respondent's therapist. Neither party introduced these documents into evidence at the hearing.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation under Section 490 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) giving rise to the suspension or revocation.

(4) Whether the licensee has complied with any terms of probation, parole, restitution, or any other sanctions lawfully imposed against such person.

(5) If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.

(6) Evidence, if any, concerning the degree to which a false statement relative to application for licensure may have been unintentional, inadvertent or immaterial.

(7) Efforts made by the applicant either to correct a false statement once made on an application or to conceal the truth concerning facts required to be disclosed.

(8) Evidence, if any, of rehabilitation submitted by the applicant.

3. The following addresses the above rehabilitation criteria:

(a) Respondent committed an impulsive act of petty theft three years ago. Respondent completed the community service ordered by the superior court, after which the court allowed respondent to withdraw her plea of nolo contendere and dismissed the case "in the interests of justice" under Penal Code section 1385.

(b) Respondent presented evidence of mitigation in that she had been suffering emotional distress from the loss of her father and brother on the same day. She had also been diagnosed with anorexia nervosa. The evidence of mitigation and respondent's otherwise clean record is a strong indication that her misconduct was an aberration.

(c) Respondent also presented evidence of rehabilitation. She has made a substantial effort to address her emotional issues by entering a residential program where she received therapy. After she completed the program, she continued to receive outpatient therapy until May 2014. In addition, the evidence established that for the past three years respondent has performed very well as a Marriage and Family Therapist Intern. Respondent's efforts at rehabilitation are recognized; however, her emotional and psychological issues were serious and there was no testimony or report from her therapist or other mental health professional indicating that respondent has completely and thoroughly

addressed these issues. Respondent's testimony alone was not sufficient to satisfy this concern. Further, it is uncertain how respondent might respond to stressful situations in the future.

(d) The purpose of disciplinary proceedings in professional licensing cases is to protect the public, not to punish an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d, 161, 164). Based on the evidence in this case, the application of the above factors of rehabilitation, as well as respondent's testimony, it is reasonable to infer that respondent's misconduct was a one-time offense. Recidivism is unlikely. However, there remains a concern that respondent has not completely addressed her past emotional and psychological problems. Therefore, discipline is appropriate in this matter under certain conditions, including a condition that respondent undergo a mental health examination. Based on respondent's efforts at rehabilitation over the past three years, a two year probationary period is appropriate.

4. Complainant submitted reasonable costs of investigation under Business and Professions Code section 125.3. However, respondent is earning minimum wage at the present time. Her salary pays for food, rent and her student loans and she has little money left over at the end of the month. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.App.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards in a manner which insure that the statute does not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The Board in imposing costs in such situations must consider the licensee's subjective good faith belief in the merits of his or her position and the Board must consider whether or not the licensee has raised colorable claim. The Board must consider the licensee's ability to make payment. Finally, the Board "may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation and prosecution to prove that a [licensee] engaged in relatively innocuous conduct." (*Id.*, footnote omitted.) Based on the respondent's low income, cause exists to reduce the costs of enforcement. Therefore, costs are reduced to \$1,000.

ORDER

IT IS HEREBY ORDERED THAT Marriage and Family Therapist Intern Registration Number IMF 61922 issued to respondent Nicole R. Andrews is revoked. The revocation is stayed and respondent's license is placed on two years' probation with the following terms and conditions. Probation shall continue on the same terms and conditions if respondent is granted another registration or license regulated by the Board.

1. 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 evaluators 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 terms 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.

2. 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.

3. 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.

4. 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.

5. 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

6. Failure to Practice

In the event 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. 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 4908.02, 4989.14, 4996.9, or 4999.20 of the Business and Professions Code. Any period of non-practice, as defined in this condition, will not apply to the reduction of the probationary term and 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; File Quarterly Reports; Comply With Probation Program; Maintain Valid License/Registration; and Cost Recovery. Respondent's license/registration shall be automatically cancelled if respondent's period of non-practice total two years.

7. Change of Place of Employment or Place of Residence

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

8. Supervision of Unlicensed Persons

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

9. Notification to Clients

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

10. Notification to Employer

Respondent shall provide each of 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.

11. 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.

12. Maintain Valid License

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

13. License Surrender

Following the effective date of this decision, if respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily request the surrender of his/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 and experience requirements, and taking and passing any and all examinations required of new applicants.

14. Instruction of Coursework Qualifying for Continuing Education

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

15. Notification to Referral Services

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

16. 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 determined by the Board.

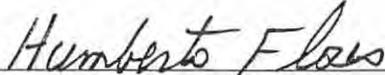
//
//
//
//
//
//
//
//
//
//
//
//
//
//
//

17. Cost Recovery

Respondent shall pay the Board \$1,000 for the reasonable costs of the investigation and prosecution of Case No. IM-2012-562. Respondent shall have the option of making equal monthly payments throughout the term of probation. Respondent shall make payments by 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. IMF-2012-562. 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: October 30, 2014



HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings