

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

In the Matter of the Accusation Against:

GISELA MARIA KUNSTLER,

Marriage and Family Therapist License
No. MFC 46011,

Respondent.

Case No. MF-2012-519

OAH No. 2013100861

DECISION AFTER RECONSIDERATION

This matter was heard by David B. Rosenman, Administrative Law Judge with the Office of Administrative Hearings on March 11, 2014, at Los Angeles, California. Helene E. Swanson, Deputy Attorney General, represented the Complainant. Respondent Gisela Maria Kunstler appeared in person and represented herself.

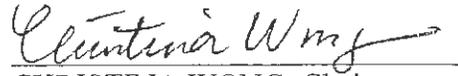
The proposed decision of the Administrative Law Judge was submitted to the Board on March 11, 2014. After due consideration thereof, the board declined to adopt said proposed decision and thereafter on May 29, 2014 issued an Order of Non-adoption. The Board requested written arguments from the parties, due by July 16, 2014. The time for filing written arguments expired and no written arguments were received from either party. After duly considering all the evidence in the case on September 15, 2014, the Board issued its Decision After Non-Adoption to become effective on October 15, 2014. On September 25, 2014 Respondent petitioned for a 30 day extension to file her petition for reconsideration. Thereafter, the Board issued an Order Granting Stay of Effective Date of Decision on October 8, 2014, granting stay until November 15, 2014. Respondent's petition for reconsideration dated November 13, 2014 was granted by the Board on November 24, 2014.

The Board met in closed session on January 9, 2015 and after having fully reviewed the entire record, the request for reconsideration, and other documents submitted by Respondent, the Board now makes and enters its Decision After Reconsideration:

The Decision After Non-Adoption dated October 15, 2014 is hereby adopted as the Board's final Decision After Reconsideration as if fully set forth herein.

This decision shall become effective on February 20, 2015.

It is so ordered on this 21st day of January, 2015.



CHRISTINA WONG, Chair
Board of Behavioral Sciences

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The Accusation was amended, by interlineation in Exhibit 1 at p. 1, to change the date of the expiration of Respondent's license from February 28, 2014, to February 29, 2016. Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on March 11, 2014.

Complainant seeks discipline against Respondent's license based on a conviction in 2012 and the acts underlying the conviction. To determine the proper level of discipline, Complainant seeks consideration of five prior convictions, from 1986 to 1993. Respondent offers evidence of mitigation and rehabilitation.

The proposed decision of the Administrative Law Judge was submitted to the Board on March 11, 2014. After due consideration thereof, the board declined to adopt said proposed decision and thereafter on May 29, 2014 issued an Order of Non-adoption. The Board requested written arguments from the parties, due by July 16, 2014. The time for filing written arguments in this matter has expired and no written arguments have been received from either party. The board has read and considered the entire record, including the transcript and exhibits of said hearing. Pursuant to Government Code section 11517, the Board hereby makes the following decision and order:

FACTUAL FINDINGS

Parties and Procedure

1. Kim Madsen, Complainant herein, brought the Accusation in her official capacity as the Executive Officer of the Board of Behavioral Sciences, Department of Consumer Affairs (Board).

2. On June 30, 2008, the Board issued Marriage and Family Therapist license number MFC 46011 to Respondent. The license will expire February 29, 2016.

3. On February 2, 2012, in the Superior Court, County of Los Angeles, California, in the matter entitled *People v. Kunstler*, Case No. 1WA33195, Respondent pleaded nolo contendere and was convicted of violating Penal Code section 484, subdivision (a), theft of personal property, a misdemeanor. Imposition of sentence was suspended and Respondent was placed on summary probation on terms including that she serve 30 days in jail, with credit for six days, and stay away from the shopping plaza where the shoplifting occurred. Fees were waived due to Respondent's financial hardship. Respondent has completed the terms of probation. She intends to seek expungement of the conviction but does not have the filing fee of \$175.

4. The circumstances of this conviction are that on October 14, 2011, Respondent was stopped by security personnel as she attempted to exit a Bloomingdales store without paying for eye cream with a value of \$150, which she had concealed in a tote bag.

5. The crime is substantially related¹ to the qualifications, functions or duties of a person holding a Marriage and Family Therapist license in that said conduct, to a substantial degree, evidences present or potential unfitness of a person holding a license to perform the functions authorized by said license in a manner consistent with the public health, safety or welfare.

6. Respondent's actions were the result of medical conditions inducing seizures and a dissociative condition, discussed in more detail below. While she recalls entering the store to return an item and to purchase shampoo, she does not recall placing the eye cream in her bag. Her next awareness was of being physically restrained by two people who she believed were attacking her. In fact, they were store security personnel who detained her for the theft. At the store's insistence, Respondent paid \$100 for the eye cream.

7. Complainant established that Respondent suffered several convictions in the past, and contends that this criminal record should be considered for purposes of imposing an appropriate level of discipline. Respondent replied that she disclosed her convictions when applying for her license, has an admitted history of alcohol and drug addiction, and also has a long period of sobriety and rehabilitation.

¹ See California Code of Regulations, title 16, section 1812. All further references to Regulations are to the California Code of Regulations, title 16.

8. Respondent abused alcohol and illegal drugs in her past. She was at times homeless and desperate. She testified credibly that she committed criminal acts in this period, and does not remember the details underlying many of those convictions. On December 23, 1991, Respondent pleaded nolo contendere and was convicted of violating Penal Code section 666, petty theft with a prior, a misdemeanor. The prior conviction occurred January 29, 1986, and was for violating Penal Code section 484, subdivision (a), petty theft, a misdemeanor. The December 1991 conviction related to an event in November 1990, and resulted in her being placed on summary probation for 36 months. On May 17, 2004, Respondent's petition under Penal Code section 1203.4 was granted, and the conviction was expunged.

9. On December 11, 1991, Respondent pleaded nolo contendere and was convicted of violating Penal Code section 647b, loitering and annoying or harassing an adult school student, a misdemeanor. The conviction related to an event in May 1991, and resulted in her being placed on summary probation for 24 months. On May 17, 2004, Respondent's petition under Penal Code section 1203.4 was granted, and the conviction was expunged.

10. On December 30, 1991, Respondent pleaded nolo contendere and was convicted of violating Health and Safety Code section 11550, being under the influence of a controlled substance, a misdemeanor. The conviction related to an event in December 1991, and resulted in her being placed on summary probation for three years. On March 11, 2004, Respondent's petition under Penal Code section 1203.4 was granted, and the conviction was expunged.

11. On July 30, 1993, Respondent pleaded nolo contendere and was convicted of violating Penal Code section 470, forgery, a misdemeanor. The conviction related to an event in July 1993, and resulted in her being placed on summary probation for three years. On March 2, 2004, Respondent's petition under Penal Code section 1203.4 was granted, and the conviction was expunged.

12. On her application for licensure in 2005, Respondent disclosed to the Board that she had suffered criminal convictions.

Rehabilitation and Character

13. Respondent became clean and sober on September 10, 1994. She was sincere and believable in her testimony about the depths and effects of her addictions to alcohol and illegal drugs. Also, she suffered grand mal seizures in the period from 1985 to 1994, which were treated successfully for a time with Dilantin. In 1994 Respondent began a voluntary 15-month outpatient rehabilitation program at the Didi Hirsch Community Health center, including individual and group sessions. She completed that program. In her commitment to remain sober she continues to attend daily 12-step meetings at Alcoholics Anonymous (AA) and often attends two meetings per day. She has a sponsor and serves as a sponsor. It was not established how long Respondent has attended AA meetings, although it has been at least four years.

14. Beginning about six years ago, Respondent began experiencing blackouts and other losses of consciousness. She had several car accidents and decided to stop driving and use public transportation. Her then-boyfriend agreed to pay for medical examinations and spent about

\$5000 for Respondent to see a general practitioner and then a neurologist at the University of California at Los Angeles (UCLA). The neurologist, Dr. Verna Porter, did an examination on February 29, 2012, and wrote a report (Ex. 3, pp. 95-97). Dr. Porter reported Respondent's history of dissociative thinking and fugue-like states in which she does not know what she is doing and often cannot remember events later. Dr. Porter recommended additional testing and made a referral for psychiatric assessment and care. Respondent was unable to pay for the testing or referral, and her boyfriend was unwilling to pay more than he already had. Due to her financial distress, Respondent obtained further medical care from the Venice Family Clinic. She has been waiting two years for a psychiatric referral. A neurological consultation in March 2012 found that Respondent has a broad spectrum seizure disorder. Treatment with Depakote was effective for only three months, after which she has been treated successfully with Dilantin. At present, her seizure disorder is well controlled by the Dilantin. Respondent's high blood pressure also appears to be better controlled at present.

15. Respondent has been under the psychological care of J. Gordon Nelson, Ph.D., since 2002. He sees her weekly. Recently, he has not charged for his services. Dr. Nelson wrote two reports, dated February 6, 2012, and June 27, 2012.² In the first report Dr. Nelson states that Respondent received treatment for neck and spine pain,³ as well as "infrequent but serious blackouts and loss of consciousness due to unresolved neurological issues [including] . . . periods of dissociated reasoning and lack of awareness of her surroundings." When she is "in this state of medically disabled consciousness, her disoriented thinking makes it impossible for her to reason clearly, to be alert, or to weigh the consequences of simple activities." (Ex. 3, p. 93.) Dr. Nelson also notes that Respondent has high blood pressure for which she has received hospital treatment. These issues are included in her continuing treatment.

16. In the second report (June 27, 2012), Dr. Nelson references the medical examinations Respondent underwent and opines that her epileptic seizures, convulsions, dysphoria, and fugue states "occasionally was conditioned, and I would say, caused by her neurologic and physiologically diseased state. She was physically ill, and forced to stay in bed for days at a time, and when she would go out she was largely in a state that she experienced as sleepwalking. Proper medical treatment and prescription medicine for the seizures, her neurologic imbalance, the cardio-vascular abnormalities, and her vulnerability to bouts of extremely high blood pressure have brought the situation under control and brought Ms. Kunstler to a relatively good state of health that she now experiences. She is no longer subject to states of disorientation and fugue consciousness. [¶] With proper medication her health will continue to be well, and therefore her behavior will not be subject to the aberrations that led her to the attention of the legal system. [¶] Ms. Kunstler is in a diligent program of self-improvement, and personal behavioral self-monitoring. She participates in many community self-help groups, often on a daily basis, and is a guide and a model for others." (Ex. 3, p. 94.)

² The first report was initially undated (see Ex. 3, p. 52). In the second report, Dr. Nelson referred to the first letter as being written on February 6, 2012, and supplied a dated copy of that letter (see Ex. 3, pp. 93 and 94).

³ Respondent had two slipped discs and spinal stenosis injuries for which she received treatment under Workers' Compensation.

17. After attaining her sobriety in 1994, Respondent attended classes at Santa Monica Community College and Los Angeles City College. She became certified as a drug and alcohol counselor and worked as such at the Didi Hirsch Community Health Center. She obtained a bachelor degree in psychology and a Master's degree in clinical psychology from Antioch College.

18. In recent years Respondent's practice under her license has been limited. In recent years she has had four patients, all for issues related to drug or alcohol addiction. She spoke of one continuing client, now in college, who she sees about once each semester. She does not charge this client.

19. Respondent lives with her son. She moved in with him due to her financial and medical issues. She received general relief until she turned 65 in February 2014, and now has public health insurance and receives food stamps. Respondent has taught courses in drugs and alcohol at Loyola Marymount University, California State University at Dominguez Hills, and UCLA. She is presently scheduled to teach a course at UCLA this spring, a fieldwork practicum regarding counseling skills for substance abuse treatment. Respondent's sole income for 2013 was \$2,035 received from UCLA.

20. Respondent takes responsibility for her actions. She would like to maintain her license, as she worked hard to get it and feels she is a good therapist and resource for her clients. She is willing to abide by probation terms, but cautions that her limited income and resources may make it difficult to pay related costs.

21. Respondent has in place what she did not have in place during her history of crime. She now has support groups consisting of her family and friends from AA. She was open, honest and candid in her testimony and has taken advantage of available resources to control her medical condition and address her psychological state. However, the board takes special note of the fact that Dr. Porter recommended additional neurological testing which respondent has not yet submitted to.

22. Complainant's costs are detailed in Exhibit 9. The total costs of \$4,867.50 are comprised of charges by the Deputy Attorney general and her supervisor (18.75 hours at \$170 per hour) and paralegals (12.75 hours at \$120 per hour). While the 2012 conviction was easily established by use of court records, it appears time was also spent to review the court records of earlier convictions and other documents provided by Respondent.

LEGAL CONCLUSIONS

1. Respondent's license is subject to discipline pursuant to Business and Professions Code (Code) sections 4982, subdivision (a), and 490, in that Respondent has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a licensee by reason of Findings 3, 4 and 5.

2. Respondent's license is subject to discipline pursuant to Code section 4982,

subdivisions (e) and (j), in that Respondent has committed an act involving dishonesty, and unprofessional conduct by virtue of violating the Licensed Marriage and Family Therapist Act, by reason of Findings 3, 4 and 5.

3. Regulation 1814, listing criteria for rehabilitation, states in relevant part:

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

“(1) The nature of severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.

“(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation which also could be considered as grounds for 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 licensee.”

4. Analysis of these criteria yields the following. The 2012 conviction was for shoplifting in October 2011, a minor crime. There have been no subsequent criminal acts. Respondent completed all terms of probation and intends to file for expungement. There were no false statements involved. Respondent submitted uncontradicted evidence that her medical condition played a role in her conduct. Respondent’s rehabilitation from her criminal past is clear and convincing.

5. Complainant alleges that Respondent’s convictions from 1986 through 1993 are considerations in determining the level of discipline to be imposed, if any, concerning her 2012 conviction. However, no statute or regulation requiring consideration of these convictions was referenced at the hearing. Rather, the list of rehabilitation criteria in Regulation 1814 refers to *subsequent*, not *past*, convictions. (See Legal Conclusion 3.) Nevertheless, Respondent not only

disclosed her criminal history to the Board in her license application, but also provided a sincere history of addiction and recovery and established her amenability for a probationary license. Little if any weight is given to these prior convictions.

6. Code section 125.3, subdivision (a), allows an Board to recover from a licensee the reasonable costs of its investigation and prosecution of the case. Reasonable costs in this matter are \$4,867.50. However, other factors must be considered. “Finally, the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation to prove that a . . . [licensee] engaged in relatively innocuous conduct.” (*Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) Further, “the Board must determine that the [licensee] will be financially able to make later payments.” (*Ibid.*) The evidence in this matter is exactly to the contrary. Respondent is not financially able to make payments of the full amount of costs. Under these circumstances, the amount will be reduced to \$500 and a payment schedule is ordered.

7. The objective of an administrative proceeding relating to licensing is to protect the public and not to punish. (*Fahmy v. MBC* (1995) 38 Cal.App.4th 810, 817.) The crime here is not serious, however, the evidence clearly demonstrate serious medical conditions that require further diagnosed and/or treatment in the interest of respondent and well as the public. Respondent through her own perseverance and dedication and with the help of others has maintained her sobriety and otherwise law-abiding life. She is, at present, to the best of her abilities, a socially and professionally responsible person. Accordingly, the issuance of a properly conditioned probationary license is consistent with the public interest.

ORDER

The Marriage and Family Therapist license, number MFC 46011, issued to Respondent Gisela Maria Kunstler is revoked. The revocation shall be stayed and Respondent’s license shall be placed on probation for four years upon the following terms and conditions.

1. Neuro-Psychological 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 neuro-psychological evaluation by such licensed neuropsychologists as are appointed by the Board. The evaluation shall determine respondent’s fitness for practice and level of cognitive function. 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 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 participate in ongoing psychotherapy with a California licensed mental health professional that has been approved by the Board. Within 15 days of the effective date of this Decision, 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 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. Supervised Practice. Within 30 days of the effective date of this decision, 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. The supervisor shall be a current California licensed practitioner in respondent's field of practice, who shall submit written reports to the Board or its designee on a quarterly basis verifying that supervision has taken place as required and including an evaluation of respondent's performance. The supervisor shall be independent, with no prior business, professional or

personal relationship with respondent.

If respondent is unable to secure a supervisor in his or her field of practice due to the unavailability of mental health care professionals in the area, then the Board may consider the following options for satisfying this probationary term:

- (1) Permitting the respondent to receive supervision via videoconferencing; or,
- (2) Permitting respondent to secure a supervisor not in the respondent's field of practice.

The foregoing options shall be considered and exhausted by the Board in the order listed above. The Board may require that respondent provide written documentation of her good faith attempts to secure face-to-face supervision, supervision via videoconferencing or to locate a mental health professional that is licensed in the respondent's field of practice.

Failure to file the required reports in a timely fashion shall be a violation of probation. Respondent shall give the supervisor access to respondent's fiscal and client records. Supervision obtained from a probation supervisor shall not be used as experience gained toward licensure.

If the supervisor is no longer available, respondent shall notify the Board within 15 days and shall not practice until a new supervisor has been approved by the Board. All costs of the supervision shall be borne by respondent. Supervision shall consist of at least one (1) hour per week in individual face to face meetings. The supervisor shall not be the respondent's therapist.

Respondent shall not practice until she has received notification that the Board has approved respondent's supervisor.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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 4980.02, 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 periods of non-practice total two years.

8. 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.

9. 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.

10. 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.

11. 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 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.

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 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 will 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 \$1,200 per year.

17. Cost Recovery - Respondent shall pay the Board \$500 as the reasonable costs of the investigation and prosecution. Respondent shall make such payments as follows: monthly payments of \$50. Respondent shall make the check or money order payable to the Board of Behavioral Sciences and shall indicate on the check or money order that it is the cost recovery payment for Case No. MF-2012-519. 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.

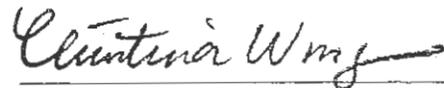
Cost recovery must be completed six months prior to the termination of probation. A payment plan authorized by the Board may be extended at the discretion of the Enforcement Manager based on good cause shown by the probationer.

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 revocation of Respondent's license provided in the Decision.

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

This decision shall become effective on October 15, 2014.

It is so ordered on this 15th day of September 2014.



CHRISTINA WONG, Chair
Board of Behavioral Sciences

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

10 In the Matter of the Accusation Against:

Case No. MF-2012-519

11 **GISELA MARIA KUNSTLER**
12 1825 S. Westgate Avenue
Los Angeles, CA 90025

A C C U S A T I O N

13 Marriage and Family Therapist License No.
14 MFC 46011

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about June 30, 2008, the Board issued Marriage and Family Therapist License
23 No. MFC 46011 to Gisela Maria Kunstler (Respondent). The Marriage and Family Therapist
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on February 28, 2014, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 to determine if the conviction is substantially related to the qualifications, functions, or duties of a
2 licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a
3 plea of nolo contendere made to a charge substantially related to the qualifications, functions, or
4 duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the
5 meaning of this section. The board may order any license or registration suspended or revoked,
6 or may decline to issue a license or registration when the time for appeal has elapsed, or the
7 judgment of conviction has been affirmed on appeal, or, when an order granting probation is
8 made suspending the imposition of sentence, irrespective of a subsequent order under Section
9 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not
10 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
11 indictment.

12

13 "(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this
14 chapter [Licensed Marriage and Family Therapist Act] or any regulation adopted by the board.

15

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

18 COST RECOVERY

19 7. Section 125.3 provides that the Board may request the administrative law judge to
20 direct a licentiate found to have committed a violation or violations of the licensing act to pay a
21 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

22 FIRST CAUSE FOR DISCIPLINE

23 (Conviction of a Substantially Related Crime)

24 8. Respondent is subject to disciplinary action under Sections 490 and 4982,
25 subdivision (a), on the grounds of unprofessional conduct, in that Respondent was convicted of a
26 crime substantially related to the qualifications, functions, or duties of a licensee, as follows:

27 a. On or about February 2, 2012, after pleading nolo contendere, Respondent was
28 convicted of one misdemeanor count of violating Penal Code section 484(a) [theft] in the criminal

1 proceeding entitled *The People of the State of California v. Gisela Maria Kunstler* (Super. Ct. Los
2 Angeles County, 2011, No. 1WA33195). The Court sentenced Respondent to 60 days jail, placed
3 her on 24 months probation and ordered her to stay away from Santa Monica Place shopping
4 mall.

5 b. The circumstances underlying the conviction are that, on or about October 14, 2011,
6 Respondent entered the Bloomingdales Department Store at the Santa Monica Place mall,
7 purchased shampoo, then walked over to the cosmetics counter, where she shoplifted one
8 Lancome "Secret De Vie Yeux" eye crème valued at \$150.00, by putting it in her purse without
9 paying for it and exiting the store. An employee alerted a loss prevention officer, upon seeing
10 Respondent at the store, that she was a possible suspect from the theft of a candle three days
11 earlier. It was subsequently confirmed that, on or about October 11, 2011, Respondent had
12 shoplifted the "Jo Malone" scented, three candle set valued at \$95.00 from Bloomingdales.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Dishonest Acts)**

15 9. Respondent is subject to disciplinary action under Section 4982, subdivision (j), on
16 the grounds of unprofessional conduct, in that on or about October 11, 2011 and October 14,
17 2011, Respondent committed substantially related dishonest, corrupt, and/or fraudulent acts.
18 Complainant refers to and by this reference incorporates the allegations set forth above in
19 Paragraph 8, subparagraphs a and b, inclusive, as though set forth fully herein.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct / Violate Licensed Marriage and Family Therapist Act)**

22 10. Respondent is subject to disciplinary action under Section 4982 and/or Section 4982,
23 subdivision (e), in that Respondent committed acts of unprofessional conduct, and/or acts
24 violating the Licensed Marriage and Family Therapist Act. Complainant refers to and by this
25 reference incorporates the allegations set forth above in Paragraphs 8 and 9, inclusive, as though
26 set forth fully.

27 //

28 //

DISCIPLINARY CONSIDERATIONS

11. To determine the degree of discipline, Complainant alleges that:

a. On or about December 20, 2005, Respondent, in her application for a marriage and family therapist license, admitted in Question 20 under penalty of perjury to having been convicted of, plead guilty to, or plead nolo contendere to a misdemeanor or felony.

b. On or about July 30, 1993, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 470 [forgery] in the criminal proceeding entitled *The People of the State of California v. Gisela Maria Kunstler* (Muni. Ct. Los Angeles County, 1993, No. 93M04275). The court sentenced Respondent to 45 days jail and placed her on three years probation. On or about September 14, 1993, Respondent's probation was revoked when she did not appear in court, and a bench warrant was issued. On or about December 21, 1993, Respondent admitted to violating her probation, and her probation was reinstated. Respondent was sentenced to serve two additional days in the Los Angeles County Jail. On or about March 2, 2004, the Court dismissed the matter pursuant to Penal Code section 1203.4.

c. The circumstances underlying the conviction occurred on or about July 18, 1993.

d. On or about December 30, 1991, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Health and Safety Code section 11550 [being under the influence of a controlled substance] in the criminal proceeding entitled *The People of the State of California v. Gisela M. Kunstler* (Muni. Ct. Los Angeles County, 1991, No. 91M09521). The court sentenced Respondent to 90 days jail and placed her on three years probation. On or about March 11, 2004, the Court dismissed the matter pursuant to Penal Code section 1203.4.

e. The circumstances underlying the conviction occurred on or about December 5, 1991.

f. On or about December 11, 1991, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code section 647(b) [loitering and annoy or molest adult school student] in the criminal proceeding entitled *The People of the State of California v. Gisela Maria Kunstler* (Muni. Ct. Los Angeles County, 1991, No. 91R11420). The

1 court sentenced Respondent to 25 days jail, placed her on 24 months probation, and ordered her
2 to complete AIDS education and submit to HIV testing. On or about May 17, 2004, the Court
3 dismissed the matter pursuant to Penal Code section 1203.4.

4 g. The circumstances underlying the conviction occurred on or about May 11, 1991.

5 h. On or about December 23, 1991, after admitting to sustaining a prior conviction of
6 Penal Code section 484(a) [theft], on or about January 29, 1986, Case No. 31335345, and
7 pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating
8 Penal Code section 666 [petty theft] in the criminal proceeding entitled *The People of the State of*
9 *California v. Gisela Maria Kunstler* (Muni. Ct. Los Angeles County, 1990, No. 90R29323). The
10 court sentenced Respondent to 55 days jail, placed her on three years probation, and ordered her
11 to stay away from Pioneer Market, 1625 Sunset Blvd., Los Angeles, CA. On or about May 17,
12 2004, the Court dismissed the matter pursuant to Penal Code section 1203.4.

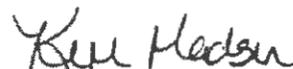
13 i. The circumstances underlying the conviction occurred on or about November 29,
14 1990.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board issue a decision:

- 18 1. Revoking or suspending Marriage and Family Therapist License No. MFC 46011,
19 issued to Gisela Maria Kunstler;
- 20 2. Ordering Gisela Maria Kunstler to pay the Board the reasonable costs of the
21 investigation and enforcement of this case, pursuant to section 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.
- 23

24 DATED: July 30, 2013



25 KIM MADSEN
26 Executive Officer
27 Board of Behavioral Sciences
28 Department of Consumer Affairs
State of California
Complainant

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