

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

In the Matter of the Statement of Issues  
Against:

ANDREA JENNIFER CARTER,

Respondent.

Case No. AP-2013-140

OAH No. 2014110232

**DECISION AFTER REJECTION**

This matter came on regularly for hearing before Matthew Goldsby, Administrative Law Judge, on March 10, 2015, at the Office of Administrative Hearings in Los Angeles, California.

Michelle McCarron, Deputy Attorney General, appeared and represented the complainant, Kim Madsen, Executive Director of the Board of Behavioral Sciences (the Board) for the Department of Consumer Affairs.

Andrea Jennifer Carter (the respondent) appeared and represented herself.

The record was closed and the matter was submitted for decision at the conclusion of the hearing.

FACTUAL FINDINGS

1. The respondent filed her Application for Registration as a Marriage and Family Therapist Intern (the Application) on July 17, 2012. On June 10, 2013, the Board denied the Application.

2. The complainant brought the Statement of Issues in her official capacity. Respondent timely submitted a Notice of Defense, which contained a request for a hearing.

3. On January 15, 2010, the respondent entered a plea of nolo contendere and was convicted of driving under the influence of alcohol in violation of Penal Code section 23152, subdivision (a), a misdemeanor. (*People v. Carter* (Super. Ct. Los Angeles County, 2010, No. 9VY03539).) The imposition of her sentence was suspended and the respondent was placed on 36 months of probation. She was ordered to complete 175 hours of community service and to enroll in and successfully complete a three-month licensed first offender alcohol and other drug education and counseling program.

4. The conviction arose from an incident on August 6, 2009. The respondent went to a nightclub with friends and consumed alcohol. At the end of the evening, a designated driver took the respondent to her home. The respondent then chose to leave her home and connect with her boyfriend. She drove her vehicle while under the influence of alcohol and fell asleep at a stoplight. When a motorist honked, the respondent woke up and pulled into a parking lot. When the police arrived, the respondent was found driving on the grass in a park. She tested positive for alcohol with a blood alcohol content of .17 percent. While testifying at the hearing, the respondent acknowledged having limited recall of her actions.

5. At the time of the incident, the respondent was going through a divorce. She was 27 years of age and emotionally unstable. As a direct result of the conviction, the respondent lost her job working with at-risk youth.

6. The respondent successfully completed the terms of probation, including the alcohol-related education courses. The respondent is able to resist alcohol and has abstained from alcohol for months at a time. The respondent continues to consume alcohol on a moderate and social basis, but she no longer goes to clubs on the weekends. She voluntarily underwent individual therapeutic counseling.

7. The respondent completed a Master's program in 2010. The respondent is currently working for a charitable organization dedicated to assisting homeless veterans. Her employer is satisfied with the respondent's job performance and considers the respondent to be a mature, dependable, responsible and caring person. If the Application is granted, the respondent will continue to work for the organization under the supervision of another licensee.

8. The respondent is actively involved with her brother's family, helping raise his three children while he recovers from a disabling condition. Since her conviction, the respondent has had no incident of public intoxication and she has not been convicted of any crime.

9. October 20, 2014, the respondent filed a petition for the dismissal of the conviction. On March 12, 2014, the court granted the petition, set aside the conviction and dismissed the complaint pursuant to Penal Code section 1203.4.<sup>1</sup>

## LEGAL CONCLUSIONS

1. Cause exists to deny the Application under Business and Professions Code section 480, subdivision (a)(1), because the respondent was convicted of a crime substantially related to the qualifications, functions and duties of a licensee. (Factual Findings, paragraphs 1, 3, and 4; Legal Conclusions, paragraphs 3 through 8.)

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<sup>1</sup> The procedure is commonly referred to as an "expungement of the criminal conviction."

2. Cause exists to deny the Application under Business and Professions Code sections 480, subdivision (a)(3), because the respondent engaged in unprofessional conduct in violation of Business and Professions Code section 4982, which would be grounds for discipline if done by a licensee. (Factual Findings, paragraphs 1, 3, and 4; Legal Conclusions, paragraphs 3 through 8.)

3. Business and Professions Code section 480, subdivision (a)(1), provides that the Board may deny a license on the grounds that the applicant was convicted of a crime.

4. The Board may deny a license if (A) the applicant has done any act that would be grounds for discipline if done by a licensee and (B) the act is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made. (Bus. & Prof. Code, § 480, subd. (a)(3).)

5. The Board may deny a license or a registration if the applicant has been guilty of unprofessional conduct. (Bus. & Prof. Code, § 4982.) Unprofessional conduct includes, but is not limited to the conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant. (*Id.*, at subd. (a).)

6. Unprofessional conduct also includes the self-administration of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the applicant or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. (*Id.*, at subd. (c).)

7. Notwithstanding any other provisions of the Business and Professions Code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Penal Section 1203.4, 1203.4a, or 1203.41. (Bus. & Prof. Code, § 480, subd. (c).)

8. In this case, the respondent consumed alcohol on August 6, 2009, to the point that she fell asleep at the wheel. She was arrested, convicted and lost her job as a direct result of consuming alcohol to excess. By driving her vehicle with a blood alcohol content of more than twice the legal limit, the respondent posed a substantial risk to herself and the general public. Accordingly, the complainant has shown cause for the Board's denial of the Application.

9. On the other hand, the respondent presented persuasive evidence of rehabilitation. (Cal. Code of Regs., tit. 16, § 1813.) In six years, there has been no recurrence of the unprofessional conduct, and she has not been convicted of any other crime. She is able to refrain from drinking alcohol, abstaining for months at a time. Other than the isolated instance of poor judgment, there is no evidence of an irresistible compulsion to consume alcohol. The respondent has matured in age and regained emotional stability. She has demonstrated a dedication to self-improvement by completing her Master's degree. Her employer is satisfied with her performance and will continue to supervise the respondent in her professional development.

10. The Application was denied on the basis of a criminal conviction, but the court dismissed the respondent's conviction pursuant to Penal Code section 1203.4. Because the Application was also denied on the basis of unprofessional conduct relating to alcohol abuse, a brief probationary period is warranted to assure the protection of the general public.

11. The Board notes that respondent is in the early stages of recovery and that a longer period of probation is needed to help her solidify her rehabilitation efforts. For these reasons, the following Order will not only benefit the respondent, but will also protect the public.

#### ORDER

Andrea Jennifer Carter shall be issued a Registration as a Marriage and Family Therapist Intern. The registration is immediately revoked, the revocation is stayed and the respondent is placed on five (5) years' probation with the following terms and conditions. Probation shall continue on the same terms and conditions if the respondent is granted a subsequent registration, becomes licensed, or is granted another registration or license regulated by the Board during the probationary period.

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

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

If respondent is determined to be unable to practice independently and safely, upon notification, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee. Respondent shall not engage in any practice for which a license/registration 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 who 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. Participate in Dependency Support Group.**

Within thirty (30) days of the effective date of this Decision, Respondent shall participate in no less than two (2) times per week in an on-going counseling program such as Alcoholics' Anonymous or another program if approved by the Board. Respondent shall submit written proof of ongoing attendance to the Board in a quarterly report.

#### **4. Education**

Respondent shall take and successfully complete the equivalency of two (2) semester units in substance abuse. All course work shall be taken 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, educational 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.

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.

#### **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. 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. Obey All Laws**

The 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 72 hours of occurrence. To permit monitoring of compliance with this term, the 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. The respondent shall pay the cost associated with the fingerprint process.

**8. File Quarterly Reports**

The respondent shall submit quarterly reports, to the Board or its designee, as scheduled on the "Quarterly Report Form" (rev. 01/12/01). The 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, the respondent shall continue to submit quarterly reports under penalty of perjury.

**9. Comply with Probation Program**

The 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.

**10. Interviews with the Board**

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

**11. Failure to Practice**

In the event the respondent stops practicing in California, the 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 30 calendar days in which the respondent is not engaging in any activities defined in Business and Professions Code Sections 4980.02, 4989.14, 4996.9, or 4999.20. Any period of non-practice, as defined in this condition, will not apply to the reduction of the probationary term and will relieve the 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; and Maintain Valid License/Registration. The failure to practice for a total of two years shall be a violation of probation and respondent's registration/license shall be subject to cancellation.

**12. Change of Place of Employment or Place of Residence**

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

**13. Supervision of Unlicensed Persons**

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

**14. Notification to Clients**

The 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. The respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

**15. Notification to Employer**

The respondent shall provide each of her current or future employers, when performing services that fall within the scope of practice of her license/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. The respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

**16. Violation of Probation**

If the respondent violates the conditions of her probation, the Board, after giving the respondent notice and the opportunity to be heard, may set aside the stay order and impose the revocation of the respondent's registration/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 the respondent's 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, the respondent's registration/license shall be fully restored.

**17. Maintain Valid License/Registration**

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

upon renewal, the respondent's license/registration shall be subject to any and all terms of this probation not previously satisfied.

**18. License/Registration Surrender**

Following the effective date of this decision, if the respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, the respondent may voluntarily request the surrender of her license/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, the respondent shall within 30 calendar days deliver respondent's license/registration and certificate and, if applicable, wall certificate to the Board or its designee and the respondent shall no longer engage in any practice for which a license/registration is required. Upon formal acceptance of the tendered license/registration, the respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of the respondent's license/registration shall be considered to be a disciplinary action and shall become a part of the respondent's license/registration history with the Board. The respondent may not petition the Board for reinstatement of the surrendered license/registration. Should the respondent, at any time after voluntary surrender, ever reapply to the Board for licensure, the 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.

**19. Instruction of Coursework Qualifying for Continuing Education**

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

**20. Notification to Referral Services**

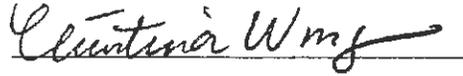
The respondent shall immediately send a copy of this decision to all referral services registered with the Board in which the respondent is a participant. While on probation, the respondent shall send a copy of this decision to all referral services registered with the Board that the respondent seeks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

**21. 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.

This decision shall become effective August 6, 2015.

IT IS SO ORDERED July 7, 2015.

A handwritten signature in black ink, appearing to read "Christine Wong", written over a horizontal line.

CHRISTINE WONG, Chair  
BOARD OF BEHAVIORAL  
SCIENCES, CALIFORNIA  
DEPARTMENT OF CONSUMER  
AFFAIRS

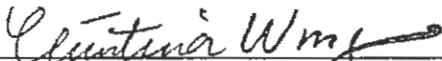
BEFORE THE  
BOARD OF BEHAVIORAL SCIENCES  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues	)	
Against:	)	
	)	CASE No. AP-2013-140
ANDREA JENNIFER CARTER	)	
	)	
Marriage and Family Therapist Intern	)	
Registration Applicant	)	
	)	
Respondent.	)	
_____	)	

**ORDER OF REJECTION OF PROPOSED DECISION**

Pursuant to Section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above entitled matter is not adopted. The Board will decide the case upon the record, including the transcript of the hearing held on March 10, 2015, and upon such written argument as the parties may wish to submit, including, in particular, argument directed to the appropriateness of the penalty. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

IT IS SO ORDERED THIS 10<sup>th</sup> day of April, 2015.

  
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CHRISTINA WONG, CHAIR  
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 Statement of Issues  
Against:

ANDREA JENNIFER CARTER,

Respondent.

Case No. AP-2013-140

OAH No. 2014110232

**PROPOSED DECISION**

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Andrea Jennifer Carter (the respondent) appeared and represented herself.

The record was closed and the matter was submitted for decision at the conclusion of the hearing.

**FACTUAL FINDINGS**

1. The respondent filed her Application for Registration as a Marriage and Family Therapist Intern (the Application) on July 17, 2012. On June 10, 2013, the Board denied the Application.
2. The complainant brought the Accusation in her official capacity. Respondent timely submitted a Notice of Defense, which contained a request for a hearing.
3. On January 15, 2010, the respondent entered a plea of nolo contendere and was convicted of driving under the influence of alcohol in violation of Penal Code section 23152, subdivision (a), a misdemeanor. (*People v. Carter* (Super. Ct. Los Angeles County, 2010, No. 9VY03539).) The imposition of her sentence was suspended and the respondent

was placed on 36 months of probation. She was ordered to complete 175 hours of community service and to enroll in and successfully complete a three-month licensed first offender alcohol and other drug education and counseling program.

4. The conviction arose from an incident on August 6, 2009. The respondent went to a nightclub with friends and consumed alcohol. At the end of the evening, a designated driver took the respondent to her home. The respondent then chose to leave her home and connect with her boyfriend. She drove her vehicle while under the influence of alcohol and fell asleep at a stoplight. When a motorist honked, the respondent woke up and pulled into a parking lot. When the police arrived, the respondent was found driving on the grass in a park. She tested positive for alcohol with a blood alcohol content of .17 percent. While testifying at the hearing, the respondent acknowledged having limited recall of her actions.

5. At the time of the incident, the respondent was going through a divorce. She was 27 years of age and emotionally unstable. As a direct result of the conviction, the respondent lost her job working with at-risk youth.

6. The respondent successfully completed the terms of probation, including the alcohol-related education courses. The respondent is able to resist alcohol and has abstained from alcohol for months at a time. The respondent continues to consume alcohol on a moderate and social basis, but she no longer goes to clubs on the weekends. She voluntarily underwent individual therapeutic counseling.

7. The respondent completed a Master's program in 2010. The respondent is currently working for a charitable organization dedicated to assisting homeless veterans. Her employer is satisfied with the respondent's job performance and considers the respondent to be a mature, dependable, responsible and caring person. If the Application is granted, the respondent will continue to work for the organization under the supervision of another licensee.

8. The respondent is actively involved with her brother's family, helping raise his three children while he recovers from a disabling condition. Since her conviction, the respondent has had no incident of public intoxication and she has not been convicted of any crime.

9. October 20, 2014, the respondent filed a petition for the dismissal of the conviction. On March 12, 2014, the court granted the petition, set aside the conviction and dismissed the complaint pursuant to Penal Code section 1203.4.<sup>1</sup>

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<sup>1</sup> The procedure is commonly referred to as an "expungement of the criminal conviction."

## LEGAL CONCLUSIONS

1. Cause exists to deny the Application under Business and Professions Code section 480, subdivision (a)(1), because the respondent was convicted of a crime substantially related to the qualifications, functions and duties of a licensee. (Factual Findings, paragraphs 1, 3, and 4; Legal Conclusions, paragraphs 3 through 8.)

2. Cause exists to deny the Application under Business and Professions Code sections 480, subdivision (a)(3), because the respondent engaged in unprofessional conduct in violation of Business and Professions Code section 4982, which would be grounds for discipline if done by a licensee. (Factual Findings, paragraphs 1, 3, and 4; Legal Conclusions, paragraphs 3 through 8.)

3. Business and Professions Code section 480, subdivision (a)(1), provides that the Board may deny a license on the grounds that the applicant was convicted of a crime.

4. The Board may deny a license if (A) the applicant has done any act that would be grounds for discipline if done by a licensee and (B) the act is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made. (Bus. & Prof. Code, § 480, subd. (a)(3).)

5. The Board may deny a license or a registration if the applicant has been guilty of unprofessional conduct. (Bus. & Prof. Code, § 4982.) Unprofessional conduct includes, but is not limited to the conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant. (*Id.*, at subd. (a).)

6. Unprofessional conduct also includes the self-administration of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the applicant or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. (*Id.*, at subd. (c).)

7. Notwithstanding any other provisions of the Business and Professions Code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Penal Section 1203.4, 1203.4a, or 1203.41. (Bus. & Prof. Code, § 480, subd. (c).)

8. In this case, the respondent consumed alcohol on August 6, 2009, to the point that she fell asleep at the wheel. She was arrested, convicted and lost her job as a direct result of consuming alcohol to excess. By driving her vehicle with a blood alcohol content of more than twice the legal limit, the respondent posed a substantial risk to herself and the general public. Accordingly, the complainant has shown cause for the Board's denial of the Application.

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9. On the other hand, the respondent presented persuasive evidence of rehabilitation. (Cal. Code of Regs., tit. 16, § 1813.) In six years, there has been no recurrence of the unprofessional conduct, and she has not been convicted of any other crime. She is able to refrain from drinking alcohol, abstaining for months at a time. Other than the isolated instance of poor judgment, there is no evidence of an irresistible compulsion to consume alcohol. The respondent has matured in age and regained emotional stability. She has demonstrated a dedication to self-improvement by completing her Master's degree. Her employer is satisfied with her performance and will continue to supervise the respondent in her professional development.

10. The Application was denied on the basis of a criminal conviction, but the court dismissed the respondent's conviction pursuant to Penal Code section 1203.4. Because the Application was also denied on the basis of unprofessional conduct relating to alcohol abuse, a brief probationary period is warranted to assure the protection of the general public.

### ORDER

Andrea Jennifer Carter shall be issued a Registration as a Marriage and Family Therapist Intern. The registration is immediately revoked, the revocation is stayed and the respondent is placed on two years' probation with the following terms and conditions. Probation shall continue on the same terms and conditions if the respondent is granted a subsequent registration, becomes licensed, or is granted another registration or license regulated by the Board during the probationary period.

#### **1. Submit to Biological Fluid Testing and Samples**

The respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

The 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.

#### **2. Obey All Laws**

The 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 72 hours of occurrence. To permit monitoring of compliance with this term, the 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. The respondent shall pay the cost associated with the fingerprint process.

### 3. File Quarterly Reports

The respondent shall submit quarterly reports, to the Board or its designee, as scheduled on the "Quarterly Report Form" (rev. 01/12/01). The 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, the respondent shall continue to submit quarterly reports under penalty of perjury.

### 4. Comply with Probation Program

The 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

The 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 the respondent stops practicing in California, the 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 30 calendar days in which the respondent is not engaging in any activities defined in Business and Professions Code Sections 4903.02, 4989.14, 4996.9, or 4999.20. Any period of non-practice, as defined in this condition, will not apply to the reduction of the probationary term and will relieve the 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; and Maintain Valid License/Registration. The respondent's registration shall be automatically cancelled if the respondent's periods of non-practice total two years.

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## **7. Change of Place of Employment or Place of Residence**

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

## **9. Notification to Clients**

The 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. The respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

## **10. Notification to Employer**

The 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. The 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 the respondent violates the conditions of her probation, the Board, after giving the respondent notice and the opportunity to be heard, may set aside the stay order and impose the revocation of the respondent's 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 the respondent's 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, the respondent's registration shall be fully restored.

**12. Maintain Valid License**

The 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 the respondent's license, by operation of law or otherwise, expire, upon renewal, the 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 the respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, the 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, the respondent shall within 30 calendar days deliver respondent's license and certificate and, if applicable, wall certificate to the Board or its designee and the respondent shall no longer engage in any practice for which a license is required. Upon formal acceptance of the tendered license, the respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of the respondent's license shall be considered to be a disciplinary action and shall become a part of the respondent's license history with the Board. The respondent may not petition the Board for reinstatement of the surrendered license. Should the respondent, at any time after voluntary surrender, ever reapply to the Board for licensure, the 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**

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

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**15. Notification to Referral Services**

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

DATED: March 12, 2015

  
MATTHEW GOLDSBY  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
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7 *Attorneys for Complainant*

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

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

Case No. AP-2013-140

13 **ANDREA JENNIFER CARTER**

**STATEMENT OF ISSUES**

14 Marriage and Family Therapist Intern  
15 Registration Applicant

Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about July 17, 2012, the Board of Behavioral Sciences (Board) received an  
23 application for a Marriage and Family Therapist Intern Registration from Andrea Jennifer Carter  
24 (Respondent). On or about July 6, 2012, Respondent certified under penalty of perjury to the  
25 truthfulness of all statements, answers, and representations in the application. The Board denied  
26 the application on June 10, 2013.

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2 **JURISDICTION**

3 3. This Statement of Issues is brought before the Board under the authority of the  
4 following laws. All section references are to the Business and Professions Code unless otherwise  
5 indicated.

6 **STATUTORY PROVISIONS**

7 4. Section 480 states, in pertinent part:

8 "(a) A board may deny a license regulated by this code on the grounds that the applicant  
9 has one of the following:

10 "(1) Been convicted of a crime. A conviction within the meaning of this section means a  
11 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a  
12 board is permitted to take following the establishment of a conviction may be taken when the time  
13 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an  
14 order granting probation is made suspending the imposition of sentence, irrespective of a  
15 subsequent order under the provisions of Section 1203.4 of the Penal Code.

16 . . . .

17 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,  
18 would be grounds for suspension or revocation of license.

19 (B) The board may deny a license pursuant to this subdivision only if the crime or act  
20 is substantially related to the qualifications, functions, or duties of the business or profession for  
21 which application is made.

22 "(b) Notwithstanding any other provision of this code, no person shall be denied a license  
23 solely on the basis that he or she has been convicted of a felony if he or she has obtained a  
24 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of  
25 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has  
26 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate  
27 the rehabilitation of a person when considering the denial of a license under subdivision (a) of  
28 Section 482."

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

5 6. Section 4982 states, in pertinent part:

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

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

23 . . . .

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

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

5 **FIRST CAUSE FOR DENIAL OF APPLICATION**

6 **(Conviction of a Substantially Related Crime)**

7 7. Respondent's application is subject to denial under section 480, subdivision (a)(1), in  
8 that Respondent was convicted of a substantially related crime, as follows:

9 a. On or about January 15, 2010, after pleading nolo contendere, Respondent was  
10 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)  
11 [driving under the influence of alcohol or drugs] and one misdemeanor count of violating Vehicle  
12 Code section 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in  
13 her blood] in the criminal proceeding entitled *The People of the State of California v. Andrea*  
14 *Carter* (Super. Ct. Los Angeles County, 2010, No. 9VY03539.) Respondent was placed on 36  
15 months probation, with terms and conditions and performed 175 hours of community service, in  
16 lieu of a fine or jail time.

17 b. The circumstances surrounding the conviction are that on or about August 7, 2009,  
18 the Los Angeles Police Department responded to a call of a vehicle stopped in the middle of the  
19 street with the engine running. When the officers arrived on the scene Respondent was observed  
20 driving in the middle of the park on the grass. Respondent could not remember where she was or  
21 how she had got there. Respondent displayed symptoms of being under the influence of an  
22 alcoholic beverage but denied having anything to drink. She had slurred speech, her eyes were  
23 bloodshot and watery, she had difficulty following direction, and answering questions.  
24 Respondent was subsequently arrested for violating Vehicle Code section 23152, subdivision (a)  
25 [driving under the influence of alcohol or drugs]. During the booking procedure, Respondent  
26 submitted to a breath test that resulted in a blood alcohol content level of 0.17% on the first and  
27 second reading.

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4 SECOND CAUSE FOR DENIAL OF APPLICATION

5 (Acts Warranting Denial of Licensure)

6 8. Respondent's application is subject to denial under section 480 subdivision (a)(3)(A)  
7 and (B) in that Respondent committed acts which if done by a licentiate would be grounds for  
8 suspension or revocation of her license, as follows:

9 a. Respondent was convicted of crimes substantially related to the qualifications,  
10 functions, or duties of a marriage and family therapist intern registration which to a substantial  
11 degree evidence her present or potential unfitness to perform the functions authorized by her  
12 license in a manner consistent with the public health, safety, or welfare, in violation of sections  
13 4982, subdivision (a) and 490. Complainant refers to, and by this reference incorporates, the  
14 allegations set forth above in paragraph 7, subparagraph (a), as though set forth fully.

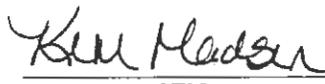
15 b. Respondent used alcoholic beverages to an extent or in a manner dangerous or  
16 injurious to herself or the public, in violation of section 4982, subdivision (c). Complainant refers  
17 to, and by this reference incorporates, the allegations set forth above in paragraph 7, subparagraph  
18 (b), as though set forth fully.

19 PRAYER

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

- 22 1. Denying the application of Andrea Jennifer Carter for a Marriage and Family Therapist  
23 Intern Registration; and  
24 2. Taking such other and further action as deemed necessary and proper.

25 DATED: March 13, 2014

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

*Complainant*

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