

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

In the Matter of the First Amended Accusation
and Petition to Revoke Probation Against:

L. AARON SMITH
4844 Reinhardt Drive
Oakland, CA 94619

Associate Clinical Social Worker Registration
No. ASW 33082

Respondent.

Case No. D1-2010-1332

OAH No. 2014080754

DECISION AND ORDER

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

This Decision shall become effective on October 16, 2015.

It is so ORDERED September 16, 2015.



FOR THE BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS

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2 FRANK H. PACOE
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9 **STATE OF CALIFORNIA**

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14 **Associate Clinical Social Worker Registration**
15 **No. ASW 33082**

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16 Respondent.

17
18 In the interest of a prompt and speedy settlement of this matter, consistent with the public
19 interest and the responsibility of the Board of Behavioral Sciences (Board) of the Department of
20 Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and
21 Disciplinary Order which will be submitted to the Board for approval and adoption as the final
22 disposition of the First Amended Accusation and Petition to Revoke Probation.

23 PARTIES AND LICENSE HISTORY

24 1. Kim Madsen (Complainant) is the Executive Officer of the Board. She brought this
25 action solely in her official capacity and is represented in this matter by Kamala D. Harris,
26 Attorney General of the State of California, by Leslie E. Brast, Deputy Attorney General.

27 2. Respondent L. Aaron Smith (Respondent) is represented in this proceeding by
28 attorneys Tanya Koshy of the East Bay Community Law Center, whose address is 2921 Adeline

1 Street, Berkeley, California 94703; and Christina Brown of O'Melveny & Myers LLP, whose
2 address is Two Embarcadero Center, 28th Floor, San Francisco, California 94111.

3 3. On or about May 24, 2012, the Board entered a Decision and Order in Case No. AP-
4 2010-1332 adopting the parties' Stipulated Settlement and Disciplinary Order by which
5 Respondent was issued Associate Clinical Social Worker (ACSW) Registration No. ASW
6 33082.¹ The registration was then immediately revoked, and the revocation stayed subject to
7 Respondent's successful completion of a four-year term of probation under certain terms and
8 conditions.

9 4. On or about June 18, 2013, Respondent filed a Petition for Modification of Penalty
10 requesting that the Board allow him to discontinue psychotherapy and biological fluid testing.
11 The Board heard Respondent's petition on or about August 21, 2013. On or about October 18,
12 2013, the Board issued a Decision and Order denying Respondent's petition for release from
13 psychotherapy and biological fluid testing; however, the Board reduced the psychotherapy
14 condition of Respondent's probation (Probation Condition 2) from weekly therapy sessions to bi-
15 monthly sessions.

16 5. On or about September 3, 2013, after the hearing on Respondent's Petition for
17 Modification of Penalty but before the Board issued its Decision and Order, Respondent was
18 ordered to cease practice as an ACSW pursuant to Business and Professions Code section 315.2.²

19 6. Respondent's ACSW Registration was delinquent from June 1, 2014 through
20 November 26, 2014. Otherwise, it is and has been in full force and effect at all times relevant to
21 the charges brought in the First Amended Accusation and Petition to Revoke Probation No. D1-
22 2010-1332, and will expire on May 31, 2015, unless renewed.

23 ¹ For technical reasons, Respondent's registration issued on May 22, 2012, and reflects
24 that date as the date of issuance.

25 ² Business and Professions Code section 315.2, subdivision (a), mandates that healing arts
26 boards "shall order a licensee of the board to cease practice if the licensee tests positive for any
27 substance that is prohibited under the terms of the licensee's probation or diversion program."
28 Subdivision (b) provides that such an order to cease practice "shall not be governed by the
provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
Government Code." Subdivision (c) states that "[a] cease practice order under this section shall
not constitute disciplinary action." (Bus. & Prof. Code, § 315.2.)

1 CULPABILITY

2 12. Respondent understands and agrees that the charges and allegations in First Amended
3 Accusation and Petition to Revoke Probation No. D1-2010-1332, if proven at a hearing,
4 constitute cause for imposing discipline upon his Associate Clinical Social Worker Registration.

5 13. For the purpose of resolving the First Amended Accusation and Petition to Revoke
6 Probation without the expense and uncertainty of further proceedings, Respondent hereby gives
7 up his right to contest those charges, agrees that his Associate Clinical Social Worker Registration
8 is subject to discipline, and agrees to be bound by the Board's probationary terms and conditions
9 as set forth in the Disciplinary Order below.

10 CONTINGENCY

11 14. This stipulation shall be subject to approval by the Board of Behavioral Sciences.
12 Respondent understands and agrees that counsel for Complainant and Board staff may
13 communicate directly with the Board regarding this stipulation and settlement, without notice to
14 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
15 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the
16 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
17 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect and, except
18 for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board
19 shall not be disqualified from further action by having considered this matter.

20 15. The parties understand and agree that Portable Document Format (PDF) and facsimile
21 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
22 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

23 16. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
24 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
25 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
26 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
27 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
28 writing executed by an authorized representative of each of the parties.

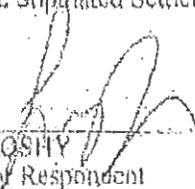
1 Professions Code section 4996.9, including, but not limited to, the counseling of and/or
2 psychotherapy with individuals, families or groups; crisis intervention and therapy; and the
3 assessment, planning, implementation and evaluation of clinical interventions and treatment
4 plans, unless Respondent voluntarily surrenders his registration and the surrender is accepted by
5 the Board. Engagement in any aspect of clinical social work practice will be deemed a violation
6 of the cease practice order and cause for discipline of Respondent's ACSW registration and
7 revocation of Respondent's probation, regardless of the status (governmental, educational,
8 nonprofit or charitable) of the institution with which Respondent is employed.

9 ACCEPTANCE

10 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
11 discussed it with my attorneys. I understand the stipulation and the effect it will have on my
12 Associate Clinical Social Worker Registration. I enter into this Stipulated Settlement and
13 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
14 Decision and Order of the Board of Behavioral Sciences.

15 DATED: 4/8/15 
16 _____
17 L. AARON SMITH
Respondent

18 I have read and fully discussed with my client, Respondent L. Aaron Smith, the terms and
19 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order
20 I approve its form and content.

21 DATED: 4/8/15 
22 _____
23 TANYA KOSHY
Attorney for Respondent

24 I have read and fully discussed with my client, Respondent L. Aaron Smith, the terms and
25 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
26 I approve its form and content.

27 DATED: 4/8/2015 
28 _____
CHRISTINA BROWN
Attorney for Respondent

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ENDORSEMENT

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

Dated: 4/9/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
FRANK H. PACOE
Supervising Deputy Attorney General



LESLIE E. BRAST
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation & Petition to Revoke Probation No. D1-2010-1332

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10 In the Matter of the First Amended Accusation
11 and Petition to Revoke Probation Against,

Case No. D1-2010-1332

12 **L. AARON SMITH**
13 **4844 Reinhardt Drive**
Oakland, CA 94619

**FIRST AMENDED ACCUSATION AND
PETITION TO REVOKE PROBATION**

14 **Associate Clinical Social Worker**
15 **Registration No. ASW 33082**

16 Respondent.

17 Complainant alleges:

18 PARTIES

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

22 2. On or about May 22, 2012, the Board issued Associate Clinical Social Worker
23 Registration Number ASW 33082 to L. Aaron Smith (Respondent). The Associate Clinical Social
24 Worker Registration was in effect at all times relevant to the charges brought herein and will
25 expire on May 31, 2015, unless renewed.

26 3. In a disciplinary action entitled, *In the Matter of the Statement of Issues Against Lon*
27 *Aaron Smith*, Case No. AP-2010-1332, the Board issued a Decision, effective May 24, 2012, in
28 which an Associate Clinical Social Worker Registration was issued to Respondent and

1 immediately and automatically revoked. The revocation was stayed and Respondent's Associate
2 Clinical Social Worker Registration was placed on probation for a period of four (4) years with
3 certain terms and conditions. A copy of that Decision is attached as Exhibit A and is incorporated
4 by reference.

5 JURISDICTION

6 4. This First Amended Accusation and Petition to Revoke Probation is brought before
7 the Board under the authority of the following laws. All section references are to the Business and
8 Professions Code (Code) unless otherwise indicated.

9 5. Code section 4992.4 states that "[t]he proceedings for the suspension or revocation of
10 licenses under this chapter shall be conducted in accordance with Chapter 5 (commencing with
11 Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall
12 have all the powers granted therein."

13 6. Code section 4996.11 states that "[t]he board may suspend or revoke the license of
14 any person who is guilty on the grounds set forth in Section 4992.3. The proceedings for the
15 suspension or revocation of licenses under this article shall be conducted in accordance with
16 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government
17 Code, and the board shall have all the powers granted in that chapter."

18 7. Code section 118(b) provides that the expiration of a license shall not deprive the
19 Board of jurisdiction to proceed with a disciplinary action during the period within which the
20 license may be renewed or reinstated.

21 8. Code section 4990.16 states:

22 Protection of the public shall be the highest priority for the board in
23 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection
24 of the public is inconsistent with other interests sought to be promoted, the protection
of the public shall be paramount.

25 STATUTORY PROVISIONS

26 9. Code section 4991.1 states:

27 A person engages in the practice of clinical social work when he or she
28 performs or offers to perform or holds himself or herself out as able to perform this
service for remuneration in any form, including donations.

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10. Code section 4992.3 states:

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

...

(d) Incompetence in the performance of clinical social work.

...

(f) Violating, attempting to violate, or conspiring to violate this chapter or any regulation adopted by the board.

(g) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity . . .

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

11. Code section 4996(b) states:

It is unlawful for any person to engage in the practice of clinical social work unless at the time of so doing such person holds a valid, unexpired, and unrevoked license under this article.

12. Code section 4996.9 defines the practice of clinical social work as:

. . . a service in which a special knowledge of social resources, human capabilities, and the part that unconscious motivation plays in determining behavior, is directed at helping people to achieve more adequate, satisfying, and productive social adjustments. The application of social work principles and methods includes, but is not restricted to, counseling and using applied psychotherapy of a nonmedical nature with individuals, families, or groups; providing information and referral services; providing or arranging for the provision of social services; explaining or interpreting the psychosocial aspects in the situations of individuals, families, or groups; helping communities to organize, to provide, or to improve social or health services; doing research related to social work; and the use, application, and integration of the coursework and experience required by Sections 4996.2 and 4996.23.

Psychotherapy, within the meaning of this chapter, is the use of psychosocial methods within a professional relationship, to assist the person or persons to achieve a better psychosocial adaptation, to acquire greater human realization of psychosocial potential and adaptation, and to modify internal and external conditions which affect individuals, groups, or communities in respect to behavior, emotions, and thinking, in respect to their intrapersonal and interpersonal processes.

1 FACTUAL BACKGROUND

2 13. On May 24, 2012, the Board issued a Decision and Order adopting a stipulated
3 settlement resulting in the issuance of an Associate Clinical Social Worker (ACSW) Registration
4 to Respondent on a probationary basis subject to numerous conditions of probation. These
5 included conditions requiring that Respondent abstain from alcohol, submit to biological fluid
6 testing, file quarterly reports, comply with the Board's probation program, and cooperate with
7 representatives of the Board in its monitoring and investigation of Respondent's compliance.

8 14. As part of his compliance with the Board's testing condition, Respondent was required
9 to make daily contact with the Board's drug and alcohol testing provider, Phamatech Laboratories
10 and Diagnostics (Phamatech), and to submit to testing as directed. On numerous dates between
11 June 2012 and October 2014, Respondent failed to log or call in to Phamatech as required.
12 Respondent failed to submit to testing as required on five occasions between September 2012 and
13 August 2014. Respondent was not excused from contacting Phamatech or from testing on any of
14 these occasions.

15 15. Respondent failed to submit a quarterly report for the April—June 2013 reporting
16 period.

17 16. On or about August 13, 2013, Respondent tested positive for ethyl glucuronide (EtG),
18 a metabolite of ethanol (ethyl alcohol). Respondent failed to provide Board staff with an
19 explanation for his positive test result, as requested.

20 17. As a result of his positive test for alcohol, Respondent was ordered to cease practice
21 as an ACSW, effective September 3, 2013, pursuant to Business and Professions Code section
22 315.2.¹ At that time, Respondent was employed as a mental health clinician at Youth UpRising, a
23 non-profit organization serving youth and young adults in Oakland, California. In response to the
24

25 ¹ Business and Professions Code section 315.2, subdivision (a), mandates that healing arts
26 boards "shall order a licensee of the board to cease practice if the licensee tests positive for any
27 substance that is prohibited under the terms of the licensee's probation or diversion program."
28 Subdivision (b) provides that such an order to cease practice "shall not be governed by the
provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
Government Code." Subdivision (c) states that "[a] cease practice order under this section shall
not constitute disciplinary action." [Bus. & Prof. Code, § 315.2.]

1 Board's cease practice order, Youth UpRising and Respondent revised his professional identifiers
2 from ACSW to MSW, indicating Respondent's professional degree as a master of social work.
3 Otherwise, Respondent continued to provide direct individual and group counseling services to
4 clients at Youth UpRising in violation of the Board's cease practice order. On December 3, 2014,
5 Board staff wrote to Respondent reiterating the Board's cease practice order. In a letter dated
6 December 31, 2014, Complainant notified Respondent that he was in violation of the cease
7 practice order and again directed him to immediately discontinue providing clinical services to
8 clients. As of January 6, 2015, Respondent reported that he was seeing an average of 17 clients a
9 week.

10 **ACCUSATION**

11 FIRST CAUSE FOR DISCIPLINE

12 (Unauthorized Practice of Social Work)

13 18. Respondent is subject to disciplinary action under Code sections 4991.1, 4992.3(f)
14 and/or 4996(b), for the unauthorized practice of social work in that he engaged in the practice of
15 clinical social work in violation of the Board's cease practice order, effective September 3, 2013,
16 as described in paragraphs 13 through 17, above.

17
18 SECOND CAUSE FOR DISCIPLINE

19 (Incompetence, Misrepresentation and/or Dishonesty)

20 19. Respondent is subject to disciplinary action under Code section 4992.3, subdivisions
21 (d), (g) and/or (k) for incompetence, misrepresentation and/or dishonesty in that he revised his
22 professional identifiers from ACSW to MSW following the Board's cease practice order, but
23 otherwise continued to counsel clients in contravention of the order, as described in paragraphs 13
24 through 17, above.

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THIRD CAUSE TO REVOKE PROBATION

(Failure to File Quarterly Report)

24. At all times after the effective date of Respondent’s probation, Condition 8 stated:

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 he 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.

25. Respondent’s probation is subject to revocation pursuant to Probation Condition 8 in that he failed to submit a quarterly report as required for the reporting period of April—June 2013.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Comply with Probation Program)

26. At all times after the effective date of Respondent’s probation, Condition 9 stated:

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.

27. Respondent’s probation is subject to revocation for failure to comply with Probation Condition 9, as follows:

- a. Respondent failed to abstain from the use of alcohol;
- b. Respondent failed to log in, call in, or submit to biological fluid testing;
- c. Respondent failed to file a quarterly report;
- d. Respondent failed to provide Board staff with an explanation for his positive test result, as requested;
- e. Respondent failed to cease practice as a mental health clinician at Youth UpRising in violation of the Board’s order, effective September 3, 2013, as detailed in paragraphs 13 through 17, above.

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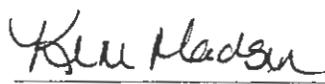
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PRAYER

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

1. Revoking the probation that was granted by the Board of Behavioral Sciences in Case No. AP-2010-1332, and imposing the disciplinary order that was stayed thereby revoking Associate Clinical Social Worker Registration No. ASW 33082, issued to L. Aaron Smith;
2. Revoking or suspending Associate Clinical Social Worker Registration No. ASW 33082, issued to L. Aaron Smith;
3. Taking such other and further action as deemed necessary and proper.

DATED: February 3, 2015



KIM MADSEN
Executive Officer
Board of Behavioral Sciences
Department of Consumer Affairs
State of California
Complainant

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