

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

In the Matter of the Accusation Against:

DARIUS JOSEPH KRZEMIONKA

Marriage and Family Therapist
License No. MFC 44985,

Respondent.

Case No. MF-2013-483

OAH No. 2014071187

DECISION AFTER REJECTION

This matter came on regularly for hearing on December 18, 2014, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Kim Madsen (Complainant) was represented by Langston M. Edwards, Deputy Attorney General.

Darius Joseph Krzemionka (Respondent) was present and represented himself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

The proposed decision of the administrative law judge was submitted to the Board on December 26, 2014. After due consideration thereof, the Board declined to adopt the proposed decision and thereafter on March 3, 2015 issued an Order of Non-Adoption. On April 2, 2015, the Board issued its Order Fixing Date For Submission of Written Argument. The time for filing written argument in this matter has expired and neither party submitted written argument. The Board has read and considered the entire record, including the transcript of said hearing and exhibits. Pursuant to Government Code section 11517, the Board hereby makes the following decision and order:

FACTUAL FINDINGS

1. Complainant is the Executive Officer of the Board of Behavioral Sciences, Department of Consumer Affairs, State of California (Board),

2. On October 15, 2007, the Board issued Marriage and Family Therapist License No. MFC 44985 to Respondent. The license expired on March 31, 2011 due to non-payment of renewal fees. It was renewed on March 16, 2013. The license will expire on March 31, 2015, unless renewed.

3. On April 17, 2012, in the Superior Court of California, County of Los Angeles, in Case No. 1PY02232, Respondent pled guilty to a violation of Health and Safety Code section 11377, subdivision (a) (unlawful possession of a controlled substance, methamphetamines), a misdemeanor substantially related to the qualifications, functions and duties of a marriage and family therapist pursuant to California Code of Regulations, title 16, section 1812.

4. Respondent was placed on deferred entry of judgment for 36 months under various terms and conditions including payment of a \$150 diversion restitution fee, a prohibition against using or possessing narcotics, dangerous or restricted drugs or associated paraphernalia except with a valid prescription, and a prohibition against associating with persons believed or known to be narcotic or drug users, sellers or buyers, except in an authorized drug counseling program. Respondent was also ordered to enroll in and complete a drug education program as approved by the court.

5. On September 13, 2012, deferred entry of judgment was terminated, criminal proceedings were reinstated, and Respondent was convicted of the crime in accordance with his plea. The reason for the reinstatement of charges and the conviction are not clear, but they appear to be related to the charges pending against Respondent that resulted in the conviction referenced in Factual Finding 7, below. On September 20, 2012, the court reinstated the deferred entry of judgment. Respondent successfully completed the deferred entry of judgment and, on October 17, 2013, the court set aside the deferred judgment and dismissed the case pursuant to Penal Code section 1000.3.

6. The facts and circumstances underlying the conviction are that, while working in his yard clearing debris, Respondent suffered a panic attack. He left his yard and ran down the street carrying a nine-foot tree saw, narrowly missing another individual with the saw. He took refuge in his mechanic's place of business. At the administrative hearing, Respondent opined that the incident was triggered by a drug-induced psychosis.

7. On September 20, 2012, in the Superior Court of California, County of Los Angeles, in Case No. 2PY05115, Respondent pled nolo contendere and was convicted of violating Health and Safety Code section 11364.1, subdivision (a) (possession of drug paraphernalia), a misdemeanor substantially related to the qualifications, functions and duties of a marriage and family therapist pursuant to California Code of Regulations, title 16, section 1812.

8. Respondent was sentenced to serve 60 days in the Los Angeles County Jail with credit for 10 days served and 10 days good time/work time.

9. The facts and circumstances underlying the conviction are that narcotics officers with the Los Angeles Police Department discovered a substance resembling methamphetamine and two glass pipes, the type of which are used for smoking methamphetamine, in a motel room in which Respondent was staying.

10. In his Exhibit E, Respondent offered a docket in Superior Court of California, County of Los Angeles, Case No. 2PY01909. That case was not alleged in the Accusation. It appears to be the same case as Case No. 2PY02232 referenced in Factual Findings 3, 4, 5, and 6. Therefore, no finding is made with regard to Case No. 2PY01909.

11. Respondent's criminal conduct that led to his two convictions in September 2012 was the direct result of his 2010 relapse into drug addiction. Respondent had previously been addicted to alcohol and methamphetamine, but he managed to overcome it and had been sober 11 years before his relapse. The relapse occurred following a number of traumatic events in Respondent's life. Instead of seeking help from friends and professionals, he attempted to cope with those events on his own by entering a self-imposed isolation and resuming his methamphetamine use.

12. Respondent never treated patients while under the influence. However, he cancelled and delayed appointments and/or arrived late for them. He also failed to submit invoices for services rendered. In May 2011, Respondent stopped practicing as a marriage and family therapist because he recognized that it would be unethical of him to practice while his drug use was out of control. In Respondent's words, he "tried to be responsible while being irresponsible." As a result, Respondent's home was repossessed, friends and colleagues pulled away from him because of his addiction, and he became isolated, homeless and destitute.

13. Upon recognizing his relapse, Respondent took positive steps toward recovery. In addition to terminating his practice as a marriage and family therapist, he attended Alcoholics Anonymous/Crystal Meth Anonymous meetings three to four times per week. He continues to attend those meetings with the same frequency today. In June 2013, he enrolled in and completed a 30-day inpatient drug and alcohol program at McIntyre House in Los Angeles. In February 2014, he enrolled in an outpatient crystal meth substance abuse treatment program named Friends Getting Off (formerly Friends La Brea) at the Friends Community Center in Hollywood. He completed the program in July 2014 with no fewer than 24 biological fluid tests, all of which were negative. Since August 2013, he has undergone weekly individual psychotherapy sessions.

14. Respondent's sponsor, John Clancy, is a Fellow of the International Association of Addiction and Offender Counselors. Mr. Clancy wrote a letter on Respondent's behalf stating:

I have been Mr. Krzemionka[']s] 12 step sponsor for over one year and during this time he has shown the utmost diligence in maintaining his sobriety. He has shown outstanding attendance to 12 step meetings, having attended relapse prevention groups, and developed a robust sobriety support network. He has always been ready and willing to go

the extra mile in maintenance of his sobriety, working steps, and maintaining contact with sober individual[s]. It has been my great pleasure to sponsor Mr. Krzemionka. I look forward to continuing the relationship. In summation Mr. Darius Krzemionka is an active and valued member of the sober community, he is of service to the community, and makes valuable contributions at all possible levels.

(Exhibit B.)

15. As a result of his rehabilitative efforts, Respondent has been sober since June 3, 2013, a period of close to 19 months. His sobriety was intermittent before that date.

16. Respondent attributed his relapse to a "lack of judgment" (Respondent's term) in failing to seek help for his emotional difficulties. He is regretful for his poor judgment and decisions.

17. At the time of his relapse, Respondent eschewed treatment because he was ashamed. He believed he could manage his addiction on his own. Now, he believes there are "no masks," and he now views his "badge of shame" as a "badge of courage." (Respondent's terms.) With that exposure, he finds life easier than before.

18. In May 2013, Respondent suffered a stroke. He is working on his recovery from that event while maintaining his sobriety.

19. Respondent's marriage and family therapist license means a great deal to him. His success in his profession was a source of pride. Respondent does not believe he will relapse again not only because of his rehabilitative efforts, but additionally because (1) the criminal court judge told Respondent he will be incarcerated for one year if he returns to court, and (2) Respondent leases an apartment from the county housing authority. Pursuant to the terms of the lease, he will lose his apartment if drugs are found in his apartment.

20. Respondent has a moral conviction to remain sober. He stated, "Drinking or drugging is not an option." His support system consists of his sponsor, sober friends, 12-step meetings, and his psychotherapist in addition to his awareness of other programs he can access or return to. Respondent stated, "There are lots of doors."

21. However, Respondent does not feel ready to return to work yet. He is still weak from his stroke, and he is still working on issues in psychotherapy. Respondent explained that, as a marriage and family therapist, he must approach his work with "a clean vessel." At present he has too many factors that could affect his work.

22. The Board incurred costs, including attorney fees, in the total sum of \$2,375, in connection with the investigation and prosecution of this action. The costs are reasonable. Complainant claimed an additional \$680 for "additional hours [that] were or will be incurred." (Exhibit 3.) Those fees were not proven.

23. Respondent lives alone with his dog in an apartment leased through the county housing authority. His only source of income is General Relief from the county. He has no money left after paying his small monthly expenses. Respondent cannot afford to pay the Board's costs of investigation and prosecution.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's marriage and family therapist license pursuant to Business and Professions Code sections 490, subdivision (a) and 4982, subdivision (a), for conviction of crimes substantially related to the qualifications, functions and duties of a marriage and family therapist, as set forth in Findings 3, 4, 5, 6, 7, 8, and 9.

2. Cause exists to discipline Respondent's marriage and family therapist license pursuant to Business and Professions Code section 4982, subdivision (e), for unprofessional conduct via violations of provisions of the Business and Professions Code, as set forth in Findings 3, 4, 5, 6, 7, 8, and 9.

3. Cause exists to order Respondent to pay costs claimed under section 125.3, as set forth in Findings 21 and 22. However, those costs will not be imposed against Respondent because he is unable to afford them. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 [124 Cal.Rptr.2d 701], the Court stated:

The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that regulation 317.5 does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a chiropractor who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the chiropractor's "subjective good faith belief in the merits of his or her position" [citation] and whether the chiropractor has raised a "colorable challenge" to the proposed discipline [citation]. Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [citation], the Board must determine that the chiropractor will be financially able to make later payments. 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 chiropractor engaged in relatively innocuous misconduct. [footnote omitted.]

4. The reasoning in *Zuckerman* applies as well to a marriage and family therapist as it does to a chiropractor.

5. Respondent remains destitute, surviving solely on General Relief from the county to pay his monthly expenses, including but not limited to those related to his recovery. He chose to proceed with the hearing in order to present his case of rehabilitation which, as is more fully explained below, turned out to be a case easily strong enough for Respondent to avoid an outright revocation of his license. This is the kind of case contemplated by the Court in *Zuckerman*.

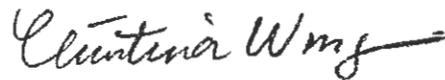
6. Having relapsed after 11 years of sobriety, lost his home, his friends, his colleagues, and his career, and having suffered two drug-related criminal convictions, Respondent could easily have regressed to the point that addiction would control the remainder of his life. He chose against that path, by entering inpatient and outpatient treatment programs, attending regular and frequent 12-step program meetings, working with a sponsor, and undergoing regular, weekly individual psychotherapy sessions. He has regained and maintained his sobriety. Yet, pursuant to Factual Finding 21, respondent has the insight to recognize and acknowledge that he needs more time and more work before returning to his duties as a marriage and family therapist. He is making progress in that regard through his psychotherapy sessions while recovering his physical strength following his stroke. The public health, safety, welfare therefore requires revocation of the license until such time as respondent provides evidence that he also is ready, willing, and able to return to practice. To find otherwise would be setting respondent up to fail and would provide less than the level of consumer protection mandated by the law.

ORDER

Marriage and Family Therapist License No. MFC 44985 issued to Respondent, Darius Joseph Krzemionka, is revoked.

This decision shall become effective July 15, 2015.

IT IS SO ORDERED June 15, 2015.



CHRISTINA WONG, Chair
BOARD OF BEHAVIORAL SCIENCES

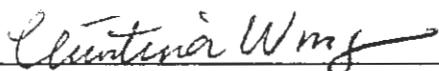
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Against:)	
)	CASE No. MF-2013-483
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Marriage and Family Therapist)	OAH No. 2014071187
License No. MFC 44985)	
)	
Respondent.)	
_____)	

ORDER OF NON-ADOPTION 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 December 18, 2014, 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 3rd day of March, 2015.



CHRISTINA WONG, CHAIR
FOR THE BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS

BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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DARIUS JOSEPH KRZEMIONKA

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PROPOSED DECISION

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(Exhibit B.)

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22. The Board incurred costs, including attorney fees, in the total sum of \$2,375, in connection with the investigation and prosecution of this action. The costs are reasonable. Complainant claimed an additional \$680 for "additional hours [that] were or will be incurred." (Exhibit 3.) Those fees were not proven.

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LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's marriage and family therapist license pursuant to Business and Professions Code sections 490, subdivision (a) and 4982, subdivision (a), for conviction of crimes substantially related to the qualifications, functions and duties of a marriage and family therapist, as set forth in Findings 3, 4, 5, 6, 7, 8, and 9.

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3. Cause exists to order Respondent to pay costs claimed under section 125.3, as set forth in Findings 21 and 22. However, those costs will not be imposed against Respondent because he is unable to afford them. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 [124 Cal.Rptr.2d 701], the Court stated:

The Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that regulation 317.5 does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing. Thus, the Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a chiropractor who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the chiropractor's "subjective good faith belief in the merits of his or her position" [citation] and whether the chiropractor has raised a "colorable challenge" to the proposed discipline [citation]. Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [citation], the Board must determine that the chiropractor will be financially able to make later payments. 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 chiropractor engaged in relatively innocuous misconduct. [footnote omitted.]

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6. Having relapsed after 11 years of sobriety, lost his home, his friends, his colleagues, and his career, and having suffered two drug-related criminal convictions, Respondent could easily have regressed to the point that addiction would control the remainder of his life. He chose against that path, by entering inpatient and outpatient treatment programs, attending regular and frequent 12-step program meetings, working with a sponsor, and undergoing regular, weekly individual psychotherapy sessions. He has regained and maintained his sobriety. Yet, Respondent has the insight to recognize and acknowledge that he needs more time and more work before returning to his duties as a marriage and family therapist. He is making progress in that regard through his psychotherapy sessions while recovering his physical strength following his stroke. The public health, safety, welfare and interest should be adequately protected by the issuance of a properly-conditioned probationary license. Conditions will include abstention from the use of alcohol and non-prescribed drugs. However, because Respondent does not yet feel ready to resume his practice, a period of suspension will also be imposed to enable him to adequately deal with his remaining issues and return to work with the necessary "clean vessel" he is striving to obtain.

ORDER

Marriage and Family Therapist License No. MFC 44985 issued to Respondent, Darius Joseph Krzemionka, is revoked. However, the revocation is stayed, and Respondent is placed on probation for five years on the following terms and conditions.

1. Actual Suspension

Commencing from the effective date of this decision, Respondent shall be suspended from the practice of marriage and family counseling for a period of 270 days.

2. Psychological/Psychiatric Evaluation

Within 90 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall complete a psychological or psychiatric evaluation by such licensed psychologists or psychiatrists as are appointed by the Board. The cost of such evaluation shall be borne by Respondent. Failure to pay for the report in a timely fashion constitutes a violation of probation.

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

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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 Respondent of its determination that Respondent may resume practice.

3. 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 Respondent's supervisor. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy is to be borne by Respondent.

Respondent may, after receiving the Board's written permission, receive therapy via videoconferencing if Respondent's good faith attempts to secure face-to-face counseling are unsuccessful due to the unavailability of qualified mental health care professionals in the area. The Board may require that Respondent provide written documentation of his 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 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 he may resume practice. Respondent shall document compliance with this condition in the manner required by the Board.

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

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

Failure to file the 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 hour per week in individual face to face meetings. The supervisor shall not be the Respondent's therapist.

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

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5. Education

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

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 Respondent. Units obtained for an approved course shall not be used for continuing education units required for renewal of licensure.

6. Take and Pass Licensure Examinations

Respondent shall take and pass the licensure exam(s) currently required of new applicants for the license possessed by Respondent. Respondent shall not practice until such time as Respondent has taken and passed these examinations. Respondent shall pay the established examination fees. If Respondent has not taken and passed the examination within 12 months from the effective date of this decision, Respondent shall be considered to be in violation of probation.

7. Rehabilitation Program

Within 15 days from the effective date of the decision, Respondent shall submit to the Board or its designee for prior approval the name of one or more rehabilitation program(s). Respondent shall enter rehabilitation and monitoring program within 15 days after notification of the board's approval of such program. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board or its designee. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall sign a release allowing the program to release to the Board all information the Board deems relevant. Respondent shall take all necessary steps to ensure that the rehabilitation program submits quarterly written reports to the Board addressing Respondent's treatment and progress in the program.

Components of the treatment contract shall be relevant to the violation and to Respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random biological fluid testing, abstention from drugs and alcohol, use of worksite monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs. All costs of participating in the program(s) shall be borne by Respondent.

8. 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.

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

10. Physical 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 physical evaluation by such licensed physicians 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 physician shall furnish a written report to the Board or its designee regarding Respondent's judgment and ability to function independently and safely as a therapist and such other information as the Board may require. Respondent shall execute a Release of Information authorizing the physician to release all information to the Board. Respondent shall comply with the recommendations of the physician.

If a physical evaluation indicates a need for medical treatment, within 30 days of notification by the Board, Respondent shall submit to the Board or its designee the name and qualifications of the medical provider, and a treatment plan by the medical provider by which Respondent's physical treatment will be provided.

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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 Respondent of its determination that Respondent may resume practice.

11. 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 Respondent to the Board or its designee in writing within 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.

12. 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.

13. 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 Respondent's compliance with the program.

14. 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.

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15. 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 30 calendar days in which Respondent is not engaging in any activities defined in Sections 4908.02, 4989.14, 4996.9, or 4999.20 of the Business and Professions Code. Any period of non-practice, as defined in this condition, will not apply to the reduction of the probationary term and will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; File Quarterly Reports; Comply With Probation Program; Maintain Valid License/Registration; and Cost Recovery.¹ Respondent's license shall be automatically cancelled if Respondent's period of non-practice totals two years.

16. 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.

17. 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.

18. 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.

Respondent should seek guidance from Board staff regarding appropriate application of this condition.

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¹ No cost recovery is ordered in this case.

19. Notification to Employer

Respondent shall provide each of his current or future employers, when performing services that fall within the scope of practice of his license, a copy of this Decision and the Accusation before commencing employment. Notification to Respondent's current employer shall occur no later than the effective date of this 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.

20. Violation of Probation

If Respondent violates the conditions of his probation, the Board, after giving Respondent notice and the opportunity to be heard, may set aside the stay order and impose the discipline (revocation) of Respondent's license provided in this 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 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.

21. 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.

22. License Surrender

Following the effective date of this decision, if Respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, Respondent may voluntarily request the surrender of his license to the Board. The Board reserves the right to evaluate 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 his license and certificate and, if applicable, wall certificate to the Board or its designee, and Respondent shall no longer engage in any practice for which a license is required. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the terms and conditions of probation.

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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.

23. 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.

24. 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.

25. 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 as established by the Board.

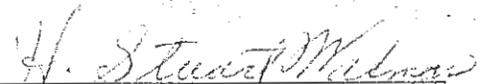
26. Cost Recovery

Complainant's request for cost recovery is denied.

27. Completion of Probation

Upon successful completion of probation, Respondent's license shall be fully restored.

Dated: December 23, 2014


H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **DARIUS JOSEPH KRZEMIONKA**
13 3944 Santa Carlotta
14 La Crescenta, CA 91214
15 Marriage and Family Therapist
16 License No. MFC 44985
17 Respondent.

Case No. MF-2013-483

A C C U S A T I O N

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Kim Madsen (Complainant) brings this Accusation solely in her official capacity as
22 the Executive Officer of the Board of Behavioral Sciences, Department of Consumer Affairs.
23 2. On or about October 15, 2007, the Board of Behavioral Sciences (Board) issued
24 Marriage and Family Therapist License No. MFC 44985 to Darius Joseph Krzemionka
25 (Respondent). The Marriage and Family Therapist License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on March 31, 2015, unless renewed.

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28 //

1 JURISDICTION

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

4
5 STATUTORY PROVISIONS

6 4. Section 118, subdivision (b) provides that the suspension or expiration of a license
7 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
8 within which the license may be renewed, restored, reissued or reinstated.

9 5. Section 490 states, in pertinent part:

10 “(a) In addition to any other action that a board is permitted to take against a licensee, a
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
13 or profession for which the license was issued.

14 (b) Notwithstanding any other provision of law, a board may exercise any authority to
15 discipline a licensee for conviction of a crime that is independent of the authority granted under
16 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
17 of the business or profession for which the licensee’s license was issued.

18 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
19 conviction following a plea of nolo contendere. Any action that a board is permitted to take
20 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
21 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
22 made suspending the imposition of sentence, irrespective of a subsequent order under the
23 provisions of Section 1203.4 of the Penal Code.”

24 6. Section 493 states:

25 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
26 the department pursuant to law to deny an application for a license or to suspend or revoke a
27 license or otherwise take disciplinary action against a person who holds a license, upon the
28 ground that the applicant or the licensee has been convicted of a crime substantially related to the

1 qualifications, functions, and duties of the licensee in question, the record of conviction of the
2 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
3 and the board may inquire into the circumstances surrounding the commission of the crime in
4 order to fix the degree of discipline or to determine if the conviction is substantially related to the
5 qualifications, functions, and duties of the licensee in question. As used in this section, 'license'
6 includes 'certificate,' 'permit,' 'authority,' and 'registration.'”

7 7. Section 4982 states, in pertinent part:

8 “The board may deny a license or registration or may suspend or revoke the license or
9 registration of a licensee or registrant if he or she has been guilty of unprofessional conduct.

10 Unprofessional conduct includes, but is not limited to, the following:

11 (a) The conviction of a crime substantially related to the qualifications, functions, or
12 duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive
13 evidence only of the fact that the conviction occurred. The board may inquire into the
14 circumstances surrounding the commission of the crime in order to fix the degree of discipline or
15 to determine if the conviction is substantially related to the qualifications, functions, or duties of a
16 licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a
17 plea of nolo contendere made to a charge substantially related to the qualifications, functions, or
18 duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the
19 meaning of this section. The board may order any license or registration suspended or revoked, or
20 may decline to issue a license or registration when the time for appeal has elapsed, or the
21 judgment of conviction has been affirmed on appeal, or, when an order granting probation is
22 made suspending the imposition of sentence, irrespective of a subsequent order under Section
23 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not
24 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
25 indictment.

26 . . .

27 (e) Violating, attempting to violate, or conspiring to violate any of the provisions of this
28 chapter or any regulation adopted by the board.”

1 COST RECOVERY

2 8. Section 125.3 provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8
9 CONTROLLED SUBSTANCE

10 9. "Methamphetamine," is a Schedule II controlled substance as designated by Health
11 and Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug
12 pursuant to section 4022.

13
14 FIRST CAUSE FOR DISCIPLINE

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

16 10. Respondent is subject to disciplinary action under sections 490, subdivision (a) and
17 4982, subdivision (a) in that Respondent was convicted of a crime substantially related to the
18 qualifications, functions, and duties of a marriage and family therapist.

19 a. On or about September 20, 2012, after pleading nolo contendere, Respondent was
20 convicted of one misdemeanor count of violating Health and Safety Code section 11364.1,
21 subdivision (a) [possession of drug paraphernalia] in the criminal proceeding entitled *The People*
22 *of the State of California v. Darius Krzemionka* (Super. Ct. L.A. County, 2012, No. 2PY05115).
23 The Court sentenced Respondent to serve 60 days in Los Angeles County Jail.

24 b. The circumstances surrounding the conviction are that on or about September 11,
25 2012, during a motel registry check at The Econo Inn located at 10750 Magnolia Blvd., Los
26 Angeles Police Officer discovered that the person registered to room #23 was currently on a
27 deferred entry of judgment for possession of methamphetamine (meth). The officers conducted a
28 consensual door-knock and made contact with Respondent at room #23. While speaking to

1 Respondent, from outside the room, the officer asked Respondent if he had ever been arrested.
2 Respondent stated, "Yeah, once. Just for assault." When asked if he had ever been arrested for
3 narcotics, Respondent stated, "no." At this point, from outside the room, the officer observed a
4 cylindrical glass pipe on the floor, at the foot of the west bed, approximately 10 feet away,
5 resembling narcotics paraphernalia commonly used to smoke meth. The officer entered the room
6 to recover the evidence and discovered an additional cylindrical glass pipe containing a black and
7 white substance, resembling meth residue in plain sight on top of the nightstand in between the
8 beds. In addition, the officer observed a plastic baggie containing a white crystalline substance
9 resembling meth in plain sight on the same night stand next to the pipe.

10 c. On or about April 17, 2012, after pleading guilty, Respondent was convicted of one
11 misdemeanor count of violating Health and Safety Code section 11377, subdivision (a)
12 [possession of controlled substances] in the criminal proceeding entitled *The People of the State*
13 *of California v. Darius Krzemionka* (Super. Ct. L.A. County, 2012, No. 1PY02232). The Court
14 placed the Respondent on deferred entry of judgment for 36 months. Respondent was ordered to
15 pay fines and complete a drug education program.

16 d. The circumstances surrounding the conviction are that on or around April 25, 2011,
17 during an investigation of a reported male with a mental illness at 5100 Cartwright Ave. Los
18 Angeles Police Officers contacted victim R.J.D.¹ R.J.D. indicated that he was working in the
19 driveway of 5128 Cartwright Ave., when he observed Respondent running up and down the street
20 with a long pole that had a knife attached to the end of it. R.J.D. observed Respondent at the rear
21 of his vehicle writing down his license plate number, as Respondent continued to run up and
22 down the street, and then ran at R.J.D. in a full sprint. Respondent was holding a 9 foot tree saw
23 in his right hand and while running came within approximately 10 feet of R.J.D. almost striking
24 him in the chest. R.J.D. retreated behind a vehicle because he was in fear for his life. Respondent
25 ran Northbound on Cartwright Ave. and R.J.D. called 911. While searching the area for
26 Respondent, the officers observed Respondent at 10560 Magnolia Blvd. at the Superior Auto

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28 ¹ Initials are used to protect victim confidentiality.

1 Clinic, inside the front office. The officer met with the owner of the auto clinic. The owner
2 indicated that Respondent came into his office in a panic with a tree saw in his hand and asked if
3 he could use the phone and have some water. While detaining Respondent, the officer observed
4 Respondent with folded papers in his left hand and a plastic tourniquet in his front right pocket.
5 Respondent handed the officer the folded papers containing a clear plastic baggie that contained
6 an off white crystalline substance, resembling meth. Respondent spontaneously stated, "That
7 looks like meth." Respondent was transported to 5100 Cartwright Ave. for a victim interview.
8 R.J.D. observed Respondent in the rear of the police vehicle and positively identified him.
9 Respondent was subsequently arrested for violating Penal Code section 245, subdivision (a)(1)
10 [assault with a deadly weapon] and Health and Safety Code section 11377, subdivision (a)
11 [possession of a controlled substance-Methamphetamine].

12
13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct/Violating Provisions of the Code)**

15 11. Respondent is subject to disciplinary action under sections 4982 and 4982,
16 subdivision (e), in that Respondent committed acts constituting unprofessional conduct and
17 violated provisions of this Bus. & Prof. Code. Complainant incorporates paragraph 10 and all
18 subparagraphs, above, as if fully set forth herein.

19
20 **PRAYER**

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

23 1. Revoking or suspending Marriage and Family Therapist License No. MFC 44985,
24 issued to Darius Joseph Krzemionka;

25 2. Ordering Darius Joseph Krzemionka to pay the Board of Behavioral Sciences the
26 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
27 Professions Code section 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: May 19, 2014



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

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