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

In the Matter of the Accusation Against: **BARBARA M. KITADA** **1569 Cottonwood Cir.** **Auburn, CA 95603-2926** **Marriage and Family Therapist License No. MFC 50140** Respondent.	Case No. : MF-2014-246 OAH No. : 2014071213

DECISION AND ORDER

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

- On page 10, paragraph 8, Business and Professions code section 4908.02 is changed to 4980.02;
- On page 12, paragraph 18, a sentence is added to read "Reimbursement cost shall be $1,200 per year."

This Decision shall be effective on August 27, 2015.

It is so ORDERED July 28, 2015.

Cintia Wm

FOR THE BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS

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

In the Matter of the Accusation Against: BARBARA M. KITADA, Marriage and Family Therapist License No. MFC 50140, Respondent.	Case No. MF-2014-246 OAH No. 2014071213

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on June 8, 2015, in Sacramento, California.

Phillip L. Arthur, Deputy Attorney General, represented Kim Madsen (complainant), Executive Officer, Board of Behavioral Sciences (Board), Department of Consumer Affairs.

Barbara M. Kitada (respondent) represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on June 8, 2015.

FACTUAL FINDINGS

1. On May 31, 2011, the Board issued Marriage and Family Therapist License No. MFC 50140 (license) to respondent. The license was in full force and effect at all times relevant to the charges set forth in the Accusation, and will expire on February 28, 2017, unless renewed or revoked. Complainant seeks to discipline respondent's license based upon her driving under the influence (DUI) conviction described below.

2. On October 28, 2013, in the Placer County Superior Court, Case No. 62-125169, respondent, on a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or higher, a misdemeanor. Pursuant to Vehicle Code section 23538, subdivision

(b)(2), respondent admitted that her BAC was more than .20 percent. Respondent was placed on conditional probation for three years. She was ordered to serve 15 days in jail, but was given credit for four days. Respondent was also ordered to enroll in a nine-month First Offender DUI program, to attend a DUI Panel, and to pay fines and fees.

3. The incident underlying respondent's DUI conviction occurred on August 17, 2013. A police officer observed respondent's vehicle "swerving in and out of the number 2 and number 3 lanes."[1] When the officer stopped respondent's vehicle, he noticed a "strong odor" of alcohol on her breath. When respondent exited her vehicle, the officer noticed that she had "extremely poor balance" and he "had to hold on to her to escort her to the sidewalk." According to the officer, respondent "had difficulty standing without being supported, and had a circular sway as she stood." It was "very obvious" to the officer that respondent was "extremely intoxicated." He had to "reach out and prevent [respondent] from falling over several times while she was attempting" to perform the standardized field sobriety tests (SFST's). The officer discontinued the SFST's for respondent's safety. Respondent's BAC was measured at .23/.24 percent. She was 62 years old at the time of this incident.

4. At the hearing, respondent testified that, on the day of the incident, she attended a blues festival at her daughter's restaurant. She was there from about 3:30 to 10:00 p.m. During this time, she drank about one beer per hour. She believed that she was "okay" to drive, but admitted that she was not thinking clearly.

5. Respondent has complied with the court's orders. She has paid all her fines and fees. She attended a Mothers Against Drunk Driving (MADD) panel. She completed the nine-month First Offender DUI program. She attended Alcoholic Anonymous (AA) for three months. Her criminal probation is scheduled to end in October 2016.

Evidence of Rehabilitation, Mitigation and Aggravation

6. At the hearing, respondent recognized that she acted "irresponsibly" and made a "very serious error" when she drove after drinking. She described the MADD panel as an "emotional experience." The panel's two guest speakers talked about losing loved ones to drunk drivers, which made it more "real" to her that she could have killed someone when she drove under the influence. In the group sessions that she attended during her nine-month DUI class, she learned about healthier ways to communicate with loved ones, friends and co-workers. The whole experience has been extremely stressful for her. She has been seeing a therapist for about three years. He has provided her with tools to use to relieve her stress. She is now seeing her therapist about once a month as needed. She has not completely abstained from drinking since her DUI, but now drinks only a few times a year, and never

---

[1] The police officer's observations were set forth in the police report, which was admitted into evidence pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448.

drives when she does. She asserted that the DUI was a one-time incident, and that she had never been involved in a similar incident before or since.

7. Respondent was married for about 21 years, during which time she was a stay-at-home mother with three children. After she divorced, she went back to school. In 2003, she obtained a master's degree in community counseling. In 2004, she returned to school again to obtain another master's degree so that she could be licensed as a Marriage and Family Therapist. In 2006, she began working for Terra Nova Counseling, where she obtained her 3,000 intern hours. Due to the financial difficulties that Terra Nova experienced, she was laid off in 2009.

8. Since respondent received her license in 2011, she has not been able to find a job which has required her to be licensed as a Marriage and Family Therapist. In 2011, she worked for Live Home, a facility that provided in-home care for seniors. She was hired as a supervisor of the in-home caregivers. Live Home was not able to stay afloat, and in February 2012, respondent was laid off. In September 2012, she was hired by Paradise Oaks, a foster family agency, to work as a social worker. She worked at Paradise Oaks until April 2014. In December 2014, she was hired to work for Auburn Ravine Terrace, a residential facility for the elderly. Respondent testified that her supervisor asked her to "falsify documents," which she would not do. She was laid off in March 2015 because she was "not a good fit." Respondent has not worked since then. She is currently receiving unemployment benefits. Respondent has been unable to obtain work due to her lack of post-licensure work experience. She believes that her age has adversely affected her job prospects.

9. Jodi Ann Gonzalez testified as a character witness on behalf of respondent. Ms. Gonzalez met respondent when they both worked at Live Home. Ms. Gonzalez described herself as the "marketing person," and respondent as the caregivers' supervisor, who also conducted assessments. Ms. Gonzalez and respondent have been friends since they met. Ms. Gonzalez "admires" respondent for her accomplishments later in life. She described respondent's DUI as "unexpected" and "very shocking" behavior for respondent. According to Ms. Gonzalez, respondent has not engaged in any other similar behavior that would pose a danger to the public. Ms. Gonzalez believes that respondent is a "great therapist," who was "loved" by the clients of Live Home. She believes that respondent has "learned her lesson" and will never again drink and drive.

Discussion

10. As set forth in California Code of Regulations, title 16, section 1814, the Board considers the following rehabilitation criteria when determining whether the license of a licensee who has been convicted of a crime should be disciplined:

> (1) Nature and severity of the act(s) or crime(s) under consideration as grounds for suspension or revocation.

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

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

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

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

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

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

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

11. When the relevant criteria set forth in California Code of Regulations, title 16, section 1814, are considered, respondent offered some evidence of rehabilitation. Two years ago, she was convicted of driving under the influence of alcohol. Her BAC was very high, about three times the legal limit. She has complied with the terms and conditions of her criminal probation, which is scheduled to end in October 2016. There was no evidence that she had ever been convicted of any other crimes, or has engaged in any additional wrongdoing. At the hearing, she accepted responsibility for her illegal conduct, and expressed remorse. She has gained insight from the DUI classes, MADD panel, and therapy she received after her DUI. The testimony of Ms. Gonzalez was strong and supportive.

12. But the recency of respondent's DUI conviction, and the fact that, when she drove after drinking, she was not aware of how impaired she was and how much of a danger she posed to the public and herself establish that, in order to adequately protect the public health, safety and welfare, respondent's license should be placed on probation for three years under the terms and conditions set forth below.

13. At the hearing, complainant recommended various terms of probation from the optional provisions set forth in the Board's Disciplinary Guidelines. Because there were no allegations or evidence that respondent has ever abused controlled substances, complainant did not establish that the optional provision regarding this issue is warranted. While complainant requested that respondent be ordered to take courses, complainant did not

establish that respondent has engaged in the types of wrongdoing set forth in the Board's Disciplinary Guidelines to warrant the imposition of such a condition.[2] Respondent is currently receiving therapy once a month. Given the evidence in this matter and respondent's financial circumstances as described below, ordering respondent to continue to receive psychotherapy once a month under the terms and conditions set forth below is adequate to protect the public interest. Given the allegations and the evidence, it is appropriate to order respondent to abstain from the use of alcohol, to submit to biological testing, and to participate in a rehabilitation program relevant to her DUI conviction and her current rehabilitation status.

14. Given respondent's inability to find employment in her field, she was concerned with the sentence in the standard Failure to Practice provision that her "license shall be automatically cancelled if respondent's period of non-practice totals two years." In light of the Board's interest in ensuring that its licensees will practice safely and effectively, respondent did not establish that this standard term should be modified. While on probation, respondent may work with her Board probation monitor to ensure that she is able to comply with the terms and conditions of her probation.

Costs

15. Complainant has requested that respondent be ordered to pay the Board's costs for investigation and enforcement in the amount of $2,520. These costs are for the services provided by the Attorney General's office in prosecuting this matter. They are supported by a Certification of Costs and a declaration of the Deputy Attorney General. Attached to the certification is a computer printout of the tasks the Attorney General's office performed, the amount of time spent performing those tasks, and the amounts charged. Respondent did not object to the costs requested by complainant. Complainant established that the requested costs are reasonable in light of the allegations and issues in this matter.

16. Respondent testified that she is not currently employed and is living solely on the unemployment benefits she is receiving. She testified that she is not able to pay in full the costs complainant has requested at this time. The requested costs and respondent's ability to pay are more fully addressed in the Legal Conclusions below.

---

[2] The Board's Disciplinary Guidelines state that the optional education provision is "appropriate when the violation is related to record keeping, which includes but is not limited to: recordkeeping, documentation, treatment planning, progress notes, security of records, billing, and reporting requirements." No violations with regard to these issues were alleged or proven in this matter.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 4982, subdivision (a), the Board may discipline the license of a licensee who has been convicted of a "crime substantially related to the qualifications, functions, or duties of a licensee." Pursuant to California Code of Regulations, title 16, section 1812, a crime will be deemed to be substantially related to the qualifications, functions and duties of a Board licensee "if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the functions authorized by his or her license in a manner consistent with the public health, safety or welfare."

2. Respondent's 2013 DUI conviction evidences a present or potential unfitness to perform the functions authorized by her license in a manner consistent with the public health, safety or welfare. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195.) As the court in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770, explained:

> Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician's fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. [Citation.]
>
> Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society.

The court's reasoning in *Griffiths* applies in this case. Consequently, respondent's 2013 DUI conviction is substantially related to the qualifications, functions and duties of a licensed Marriage and Family Therapist under California Code of Regulations, title 16, section 1812, and constitutes cause to discipline respondent's license under Business and Professions Code section 4982, subdivision (a).

3. Pursuant to Business and Professions Code section 4982, subdivision (c), the Board may discipline the license of a licensee who has used an "alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious" to herself, any other person or the public. Respondent used alcohol on August 17, 2013, to an extent as to be dangerous to herself and the public. Complainant therefore established cause to discipline respondent's license under Business and Professions Code section 4982, subdivision (c).

4. As set forth in Findings 11 through 14, complainant established that, in order to protect the public health, safety and welfare, respondent's license should be placed on probation for three years under the terms and conditions set forth below.

5. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and enforcement of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

6. As set forth in Finding 15, complainant has requested that respondent be ordered to reimburse the Board for $2,520 in costs for the Attorney General's prosecution of this matter. When all the *Zuckerman* factors are considered, this cost amount is reasonable. Given respondent's financial inability to pay total costs at this time, respondent should be permitted to pay them over the term of her probation according to a reasonable payment plan approved by the Board or its designee.

ORDER

IT IS HEREBY ORDERED THAT MFC License Number 50140 issued to respondent Barbara M. Kitada is revoked. The revocation is stayed and respondent shall be placed on three (3) years' probation with the following terms and conditions. Probation shall continue on the same terms and conditions if respondent is granted another registration or license regulated by the Board.

1. **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 month 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 or 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.

2. **Rehabilitation Program**

Within fifteen (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 a rehabilitation and monitoring program within fifteen (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.

3. **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.

4. **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 seventy-two (72) hours of occurrence. To permit monitoring of compliance with this term, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within 30 days of the effective date of the decision, unless previously submitted as part of the licensure application process. Respondent shall pay the cost associated with the fingerprint process.

5. **File Quarterly Reports**

Respondent shall submit quarterly reports, to the Board or its designee, as scheduled on the "Quarterly Report Form" (rev. 01/12/01). Respondent shall state under penalty of perjury whether she has been in compliance with all the conditions of probation. Notwithstanding any provision for tolling of requirements of probation, during the cessation of practice respondent shall continue to submit quarterly reports under penalty of perjury.

6. **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.

7. **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.

8. **Failure to Practice**

In the event respondent stops practicing in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in Sections 4908.02, 4989.14, 4996.9, or 4999.20 of the Business and Professions Code. Any period of non-practice, as defined in this condition, will not apply to the reduction of the probationary term and will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; File Quarterly Reports; Comply With Probation Program; Maintain Valid License; and Cost Recovery. Respondent's license shall be automatically cancelled if respondent's period of non-practice totals two years.

9. **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.

10. **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 supervisorial relationship in existence on the effective date of this Decision.

11. **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.

12. **Notification to Employer**

Respondent shall provide each of his or her current or future employers, when performing services that fall within the scope of practice of his or her license, a copy of this Decision and the Statement of Issues or Accusation before commencing employment. Notification to respondent's current employer shall occur no later than the effective date of the Decision or immediately upon commencing employment. Respondent shall submit, upon request by the Board or its designee, satisfactory evidence of compliance with this term of probation.

13. **Violation of Probation**

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

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

14. **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.

15. **License Surrender**

Following the effective date of this decision, if respondent ceases practicing due to retirement or health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily request the surrender of her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 30 calendar days deliver respondent's license and certificate and if applicable wall certificate to the Board or its designee and respondent shall no longer engage in any practice for which a license is required. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of respondent's license shall be considered to be a disciplinary action and shall become a part of respondent's license history with the Board. Respondent may not petition the Board for reinstatement of the surrendered license. Should respondent at any time after voluntary surrender ever reapply to the Board for licensure respondent must meet all current requirements for licensure including, but not limited to, filing a current application, meeting all current educational and experience requirements, and taking and passing any and all examinations required of new applicants.

16. **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.

17. **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.

18. **Reimbursement of Probation Program**

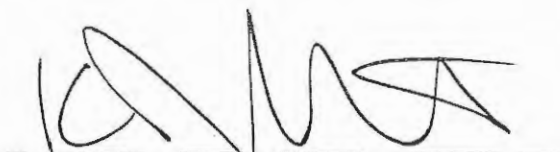
Respondent shall reimburse the Board for the costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period.

19. **Cost Recovery**

Respondent shall pay the Board $2,520 as and for the reasonable costs of the investigation and prosecution of the case. Respondent shall make such payments as determined by the Board or its designee. Respondent shall make the check or money order payable to the Board of Behavioral Sciences and shall indicate on the check or money order that it is the cost recovery payment for the case. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. Probation shall not terminate until full payment has been made. Should any part of cost recovery not be paid in accordance with the outlined payment schedule, respondent shall be considered to be in violation of probation. A period of non-practice by respondent shall not relieve respondent of his or her obligation to reimburse the board for its costs.

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

DATED: June 15, 2015



KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings

Attorney General of California
KENT D. HARRIS
Supervising Deputy Attorney General
PHILLIP L. ARTHUR
Deputy Attorney General
State Bar No. 238339
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 322-0032
Facsimile: (916) 327-8643
Attorneys for Complainant

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

In the Matter of the Accusation Against: **BARBARA M. KITADA** 913 Rosene Court Auburn, California 95603 **Marriage and Family Therapist License No. MFC 50140** Respondent.	Case No. MF-2014-246 **A C C U S A T I O N**

Kim Madsen ("Complainant") alleges:

PARTIES

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

Marriage and Family Therapist License

2. On or about May 31, 2011, the Board issued Marriage and Family Therapist License Number MFC 50140 to Barbara M. Kitada ("Respondent"). The Marriage and Family Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2015, unless renewed.

///

///

///

STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 4982 states, in pertinent part:

> The board may deny a license or 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:
>
> (a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.
>
> . . .
>
> (c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, 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. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services. . . .

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

COST RECOVERY

5. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being

renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

6. Respondent is subject to disciplinary action under Code section 4982 subdivision (a), in that she was convicted of a crime substantially related to the qualifications, functions, or duties of a licensee. Specifically, on or about October 28, 2013, in the matter entitled *People v. Barbara Melick Kitada*, Superior Court, County of Placer, Case No. 62-125169, Respondent was convicted on her plea of nolo contendere to violating Vehicle Code section 23152, subdivision (b) (driving under the influence of alcohol while having a blood alcohol level of 08% or higher), a misdemeanor. Respondent admitted that her blood alcohol concentration exceeded .20% or more, and she was sentenced to complete a driving program of nine months or longer pursuant to Vehicle Code section 23538, subdivision (b)(2), in addition to a 15 day jail term and three years of probation. The circumstances of the crime are that on or about August 17, 2013, the City of Auburn Police Department responded to reports of a vehicle swerving all over the road. A subsequent investigation by the Aubum Police Department revealed that Respondent, who was driving the vehicle, smelled of alcoholic beverages and her eyes were bloodshot. Respondent was unable to complete standardized field sobriety tests due to her inability to remain standing without assistance. Respondent's blood alcohol level was .23%/.24%.

SECOND CAUSE FOR DISCIPLINE

(Use of Alcohol in a Dangerous Manner)

7. Respondent is subject to disciplinary action under section 4982, subdivision (c), in that Respondent used alcoholic beverages to an extent as to be dangerous and injurious to herself, to any other person, or to the public, as set forth in paragraph 6, above.

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:

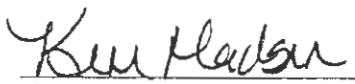
///

1. Revoking or suspending Marriage and Family Therapist License Number MFC 50140, issued to Barbara M. Kitada;

2. Ordering Barbara M. Kitada to pay the Board of Behavioral Sciences the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: July 7, 2014



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

SA2014115151
11340462.doc