

**BEFORE THE
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1F-2013-234632

KATHLEEN M. HERWATT, PH.D.
405 S Pine St
Nevada City, CA 95959

Psychologist License No. PSY 14328


Respondent.

DECISION AND ORDER

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

This Decision shall become effective on October 15, 2016.

It is so ORDERED September 15, 2016.



ANTONETTE SORRICK
EXECUTIVE OFFICER
BOARD OF PSYCHOLOGY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 VLADIMIR SHALKEVICH
Acting Supervising Deputy Attorney General
3 STEVE DIEHL
Deputy Attorney General
4 State Bar No. 235250
California Department of Justice
5 2550 Mariposa Mall, Room 5090
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6 Telephone: (559) 477-1626
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7 *Attorneys for Complainant*

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

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Case No. 1F-2013-234632

12 **KATHLEEN M. HERWATT, PH.D.**
13 **405 S PINE ST**
NEVADA CITY, CA 95959
14 **Psychologist License No. 14328**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Antonette Sorrick (Complainant) is the Executive Officer of the Board of Psychology.
21 She brought this action solely in her official capacity and is represented in this matter by Kamala
22 D. Harris, Attorney General of the State of California, by Steve Diehl, Deputy Attorney General.

23 2. Kathleen M. Herwatt, Ph.D. (Respondent) is represented in this proceeding by
24 attorney Paul Wellenkamp, whose address is 1260 B Street Suite 325, Hayward CA 94541.

25 3. On or about August 4, 1995, the Board of Psychology issued Psychologist License
26 No. 14328 to Kathleen M. Herwatt, Ph.D. (Respondent). The Psychologist License was in full
27 force and effect at all times relevant to the charges brought in Accusation No. 1F-2013-234632
28 and will expire on February 28, 2017, unless renewed.

1 charges. Respondent agrees that if she ever petitions for reinstatement of her Psychologist
2 License No. 14328, all of the charges and allegations contained in Accusation No. 1F-2013-
3 234632 shall be deemed true, correct and fully admitted by respondent for purposes of that
4 reinstatement proceeding or any other licensing proceeding involving respondent in the State of
5 California.

6 10. Respondent understands that by signing this stipulation she enables the Board to issue
7 an order accepting the surrender of her Psychologist License without further process.

8 CONTINGENCY

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

18 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
19 copies of this Stipulated Surrender of License and Order, including Portable Document Format
20 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

21 13. In consideration of the foregoing admissions and stipulations, the parties agree that
22 the Board may, without further notice or formal proceeding, issue and enter the following Order:

23 ORDER

24 IT IS HEREBY ORDERED that Psychologist License No. 14328, issued to Respondent
25 Kathleen M. Herwatt, Ph.D., is surrendered and accepted by the Board of Psychology.

26 1. The surrender of Respondent's Psychologist License and the acceptance of the
27 surrendered license by the Board shall constitute the imposition of discipline against Respondent.
28

1 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
2 license history with the Board of Psychology.

3 2. Respondent shall lose all rights and privileges as a Psychologist in California as of the
4 effective date of the Board's Decision and Order.

5 3. Respondent shall cause to be delivered to the Board her pocket license and, if one was
6 issued, her wall certificate on or before the effective date of the Decision and Order.

7 4. If Respondent ever files an application for licensure or a petition for reinstatement in
8 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
9 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
10 effect at the time the petition is filed, and all of the charges and allegations contained in
11 Accusation No. 1F-2013-234632 shall be deemed to be true, correct and admitted by Respondent
12 when the Board determines whether to grant or deny the petition.


13 5. If Respondent should ever apply or reapply for a new license or certification, or
14 petition for reinstatement of a license, by any other health care licensing agency in the State of
15 California, all of the charges and allegations contained in Accusation, No. 1F-2013-234632 shall
16 be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
17 Issues or any other proceeding seeking to deny or restrict licensure.

18 6. Respondent shall pay the Board its costs of investigation and enforcement in the
19 amount of \$9,265.00 prior to issuance of a new or reinstated license.

20 ACCEPTANCE

21 I have carefully read the above Stipulated Surrender of License and Order and have fully
22 discussed it with my attorney, Paul Wellenkamp. I understand the stipulation and the effect it
23 will have on my Psychologist License. I enter into this Stipulated Surrender of License and Order
24 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
25 Board of Psychology.

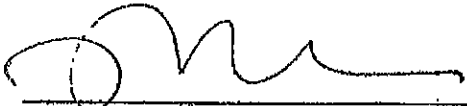
26
27 DATED: 8/15/16


KATHLEEN M. HERWATT, PH.D.
Respondent

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I have read and fully discussed with Respondent Kathleen M. Herwatt, Ph.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 8-31-2016



PAUL WELLENKAMP
Attorney for Respondent

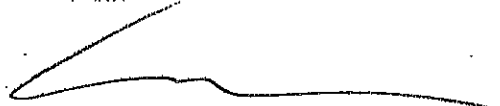
ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Psychology of the Department of Consumer Affairs.

Dated: 9/2/2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
VLADIMIR SHALKEVICH
Acting Supervising Deputy Attorney
General



STEVE DIEHL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1E-2013-234632

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 STEVE DIEHL
Deputy Attorney General
4 State Bar No. 235250
California Department of Justice
5 2550 Mariposa Mall, Room 5090
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12 **KATHLEEN M. HERWATT, PH.D.**
13 405 S Pine Street
Nevada City, CA 95959

ACCUSATION

14
15 Psychologist's License No. 14328

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Antonette Sorrick ("Complainant") brings this Accusation solely in her official
21 capacity as the Executive Officer of the Board of Psychology, Department of Consumer Affairs
22 ("Board").

23 2. On or about August 4, 1995, the Board issued Psychologist License Number 14328 to
24 Kathleen M. Herwatt, Ph.D. ("Respondent"). The Psychologist License was in full force and
25 effect at all times relevant to the charges brought herein and will expire on February 28, 2017,
26 unless renewed.

27 \\\

28 \\\

JURISDICTION

1
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 ("Code") unless otherwise
4 indicated.

5 4. Section 2960 of the Code states, in pertinent part:

6 "The board may refuse to issue any registration or license, or may issue a registration or
7 license with terms and conditions, or may suspend or revoke the registration or license of any
8 registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional
9 conduct. Unprofessional conduct shall include, but not be limited to:

10 "...

11 "(h) Willful, unauthorized communication of information received in professional
12 confidence.

13 "(i) Violating any rule of professional conduct promulgated by the board and set forth in
14 regulations duly adopted under this chapter.

15 "(j) Being grossly negligent in the practice of his or her profession.

16 "(k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.

17 "...

18 "(r) Repeated acts of negligence."

19 5. Section 2964.6 of the Code states:

20 "An administrative disciplinary decision that imposes terms of probation may include,
21 among other things, a requirement that the licensee who is being placed on probation pay the
22 monetary costs associated with monitoring the probation."

23 6. Section 125.3 of the Code states:

24 "(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary
25 proceeding before any board within the department or before the Osteopathic Medical Board, the
26 board may request the administrative law judge to direct a licentiate found to have committed a
27 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
28 investigation and enforcement of the case.

1 "(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order
2 may be made against the licensed corporate entity or licensed partnership.

3 "(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs
4 are not available, signed by the entity bringing the proceeding or its designated representative
5 shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The
6 costs shall include the amount of investigative and enforcement costs up to the date of the
7 hearing, including, but not limited to, charges imposed by the Attorney General.

8 "(d) The administrative law judge shall make a proposed finding of the amount of
9 reasonable costs of investigation and prosecution of the case when requested pursuant to
10 subdivision (a). The finding of the administrative law judge with regard to costs shall not be
11 reviewable by the board to increase the cost award. The board may reduce or eliminate the cost
12 award, or remand to the administrative law judge where the proposed decision fails to make a
13 finding on costs requested pursuant to subdivision (a).

14 "(e) Where an order for recovery of costs is made and timely payment is not made as
15 directed in the board's decision, the board may enforce the order for repayment in any appropriate
16 court. This right of enforcement shall be in addition to any other rights the board may have as to
17 any licentiate to pay costs.

18 "(f) In any action for recovery of costs, proof of the board's decision shall be conclusive
19 proof of the validity of the order of payment and the terms for payment.

20 "(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the
21 license of any licentiate who has failed to pay all of the costs ordered under this section.

22 "(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or
23 reinstate for a maximum of one year the license of any licentiate who demonstrates financial
24 hardship and who enters into a formal agreement with the board to reimburse the board within
25 that one-year period for the unpaid costs.

26 "(h) All costs recovered under this section shall be considered a reimbursement for costs
27 incurred and shall be deposited in the fund of the board recovering the costs to be available upon
28 appropriation by the Legislature.

1 "(i) Nothing in this section shall preclude a board from including the recovery of the costs
2 of investigation and enforcement of a case in any stipulated settlement.

3 "(j) This section does not apply to any board if a specific statutory provision in that board's
4 licensing act provides for recovery of costs in an administrative disciplinary proceeding."

5 7. Section 1397.1 of the California Code of Regulations states:

6 "Failure to comply with the reporting requirements contained in Penal Code Section 11166
7 shall constitute unprofessional conduct."

8 8. Section 11166 of the Penal Code states, in pertinent part:

9 "(a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter
10 shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in
11 his or her professional capacity or within the scope of his or her employment, has knowledge of
12 or observes a child whom the mandated reporter knows or reasonably suspects has been the
13 victim of child abuse or neglect. The mandated reporter shall make an initial report by telephone
14 to the agency immediately or as soon as is practicably possible, and shall prepare and send, fax,
15 or electronically transmit a written followup report within 36 hours of receiving the information
16 concerning the incident. The mandated reporter may include with the report any nonprivileged
17 documentary evidence the mandated reporter possesses relating to the incident.

18 "(1) For purposes of this article, 'reasonable suspicion' means that it is objectively
19 reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable
20 person in a like position, drawing, when appropriate, on his or her training and experience, to
21 suspect child abuse or neglect. 'Reasonable suspicion' does not require certainty that child abuse
22 or neglect has occurred nor does it require a specific medical indication of child abuse or neglect;
23 any 'reasonable suspicion' is sufficient. For purposes of this article, the pregnancy of a minor
24 does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

25 "...."

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

9. Respondent is subject to disciplinary action under section 2960, subdivision (j), in that she engaged in acts of gross negligence. The circumstances are as follows:

10. Beginning in 2010, Respondent saw S.E., an adult woman, initially for individual therapy related to S.E.'s medical condition. Beginning in February, 2011, Respondent began also seeing S.E.'s 10 year old son, R.J., and in April, 2011, Respondent began seeing S.E.'s 12 year old daughter; K.J. Each child was seen individually, except for a few sessions during which S.E. was present. Respondent saw all three patients both in person and telephonically through the end of 2012.

11. Respondent's documentation of the therapy she provided to S.E., R.J., and K.J. did not contain any patient history, documentation of treatment provided, documentation of any diagnosis, or any documentation of a treatment plan for any patient. In a deposition taken on or about May 2, 2013, Respondent stated, "I don't put together formal treatment plans. I discuss treatment with the patients."

12. Respondent's documentation of the therapy she provided to S.E., R.J., and K.J. did not contain any documentation of informed consent. There is no indication in Respondent's documentation that she discussed the limits of confidentiality, fee arrangements, or the anticipated course of therapy for any patient.

13. On or about September 19, 2011, R.J. stated in a therapy session that his father had driven a vehicle after having consumed approximately six alcoholic beverages, while R.J. was present as a passenger. R.J. reported that he was "very worried" and that his father had "almost" hit a woman in a crosswalk. Respondent failed to file a suspected child abuse report for this incident, but mentioned it in a letter to Alameda County Social Services on or about November 7, 2012.

14. On or about October 31, 2012, Respondent filed a suspected child abuse report for R.J., which stated that she believed R.J. was emotionally abused by his father. Respondent indicated in her report that R.J.'s father pointed a loaded gun at his son, and threatened to shoot

1 him. This information had been provided to Respondent in confidence during a therapy session
2 with R.J. on or about October 30, 2012.

3 15. On or about November 1, 2012, Respondent sent a letter to S.E.'s divorce attorney, at
4 the attorney's request, which repeated the information in the suspected child abuse report, as well
5 as additional information that had been provided to her by R.J. in confidence. At no time did
6 Respondent obtain permission from S.E. or R.J. to provide this information to the attorney.

7 16. The standard of care requires that psychological records, at a minimum, include a
8 basic history, treatment provided, some form of diagnosis, and some form of treatment plan,
9 sufficient to allow another professional to step in and provide future services. Respondent's
10 failures, individually and collectively, to include such basic information in her records for S.E.,
11 R.J., or K.J., are extreme departures from the standard of care.

12 17. The standard of care requires written documentation of informed consent, even if
13 such consent is given orally. Respondent's failures to document discussions with S.E., R.J., or
14 K.J. regarding the limits of confidentiality, fee arrangements, or the anticipated course of therapy,
15 individually as to each patient and collectively, are extreme departures from the standard of care.

16 18. The standard of care requires that confidential information provided by a patient or
17 client to a psychologist not be disclosed, unless mandated by law, or permitted by law for a valid
18 purpose such as to provide needed professional services; obtain appropriate professional
19 consultations; protect the patient, client, psychologist, or others from harm; or obtain payment for
20 services from a patient or client. Respondent's disclosure of confidential information to S.E.'s
21 divorce attorney, without prior authorization from S.E. or R.J., constitutes an extreme departure
22 from the standard of care.

23 **SECOND CAUSE FOR DISCIPLINE**

24 (Failure to Report Child Endangerment)

25 19. Respondent is subject to disciplinary action under section 2960, subdivision (i),
26 subdivision (k), and California Code of Regulations Section 1397.1 in that she failed to timely
27 report an instance of suspected child abuse. The circumstances are set forth in paragraphs 10
28 and 13, above, which are incorporated here by reference as if fully set forth.

1 THIRD CAUSE FOR DISCIPLINE

2 (Unauthorized Disclosure of Confidential Information)

3 20. Respondent is subject to disciplinary action under section 2960, subdivision (h), in
4 that she made a willful, unauthorized communication of information received in professional
5 confidence. The circumstances are set forth in paragraphs 10, 14 and 15, above, which are
6 incorporated here by reference as if fully set forth.

7 FOURTH CAUSE FOR DISCIPLINE

8 (Repeated Negligent Acts)

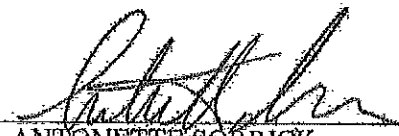
9 21. Respondent is subject to disciplinary action under section 2960, subdivision (r), in
10 that she engaged in repeated acts of negligence. The circumstances are set forth in paragraphs 10
11 through 18, above, which are incorporated here by reference as if fully set forth.

12 PRAVER

13 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Psychology issue a decision:

- 15 1. Revoking or suspending Psychologist License Number 14328, issued to Kathleen M.
- 16 Herwatt, Ph.D.;
- 17 2. Ordering Kathleen M. Herwatt, Ph.D., to pay the Board of Psychology the reasonable
- 18 costs of the investigation and enforcement of this case, and, if placed on probation, the costs of
- 19 probation monitoring;
- 20 3. Taking such other and further action as deemed necessary and proper.

21
22
23 DATED: December 8, 2015.

24 
 ANTONETTE SORRICK
 Executive Officer
 Board of Psychology
 Department of Consumer Affairs
 State of California
 Complainant

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