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STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
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BY [Signature] ANALYST

7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:
13 **Kermit Dale Johnson, M.D.**
14 **1420 Willow Pass Road, Ste. 200**
15 **Concord, CA 94520**
16
17 **Physician's and Surgeon's Certificate**
18 **No. G 45056,**
19
20 Respondent.

Case No. 800-2015-016497

OAH No. 2018031156

21 **A C C U S A T I O N**

22 Complainant alleges:

23 **PARTIES**

24 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
25 capacity as the Executive Director of the Medical Board of California, Department of Consumer
26 Affairs (Board).

27 2. On or about July 1, 1981, the Medical Board issued Physician's and Surgeon's
28 Certificate Number G 45056 to Kermit Dale Johnson, M.D. (Respondent). The Physician's and
Surgeon's Certificate will expire on January 31, 2019, unless renewed. On March 29, 2018,
Stipulation and Partial Interim Suspension Order was entered by an Administrative Law Judge,
prohibiting Respondent from practicing or attempting to practice hypnotherapy or hypnosis and
treating patients with any history of sexual abuse.

JURISDICTION

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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 4. Section 2004 of the Code states:

5 “The board shall have the responsibility for the following:

6 “(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
7 Act.

8 “(b) The administration and hearing of disciplinary actions.

9 “(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
10 administrative law judge.

11 “(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
12 disciplinary actions.

13 “(e) Reviewing the quality of medical practice carried out by physician and surgeon
14 certificate holders under the jurisdiction of the board.

15 “(f) Approving undergraduate and graduate medical education programs.

16 “(g) Approving clinical clerkship and special programs and hospitals for the programs in
17 subdivision (f).

18 “(h) Issuing licenses and certificates under the board's jurisdiction.

19 “(i) Administering the board's continuing medical education program.”

20 5. Section 2227 of the Code provides that a licensee who is found guilty under the
21 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
22 one year, placed on probation and required to pay the costs of probation monitoring, or such other
23 action taken in relation to discipline as the Board deems proper.

24 6. Section 2234 of the Code, states:

25 “The board shall take action against any licensee who is charged with unprofessional
26 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
27 limited to, the following:
28

1 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
2 violation of, or conspiring to violate any provision of this chapter.

3 “(b) Gross negligence.

4 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
5 omissions. An initial negligent act or omission followed by a separate and distinct departure from
6 the applicable standard of care shall constitute repeated negligent acts.

7 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate
8 for that negligent diagnosis of the patient shall constitute a single negligent act.

9 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
10 constitutes the negligent act described in paragraph (1), including, but not limited to, a
11 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
12 applicable standard of care, each departure constitutes a separate and distinct breach of the
13 standard of care.

14 “(d) Incompetence.

15 “(e) The commission of any act involving dishonesty or corruption which is substantially
16 related to the qualifications, functions, or duties of a physician and surgeon.

17 “(f) Any action or conduct which would have warranted the denial of a certificate.

18 “(g) The practice of medicine from this state into another state or country without meeting
19 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
20 apply to this subdivision. This subdivision shall become operative upon the implementation of the
21 proposed registration program described in Section 2052.5.

22 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
23 participate in an interview by the board. This subdivision shall only apply to a certificate holder
24 who is the subject of an investigation by the board.”

25 7. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain
26 adequate and accurate records relating to the provision of services to their patients constitutes
27 unprofessional conduct.”

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FACTS

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2 8. At all times relevant to this matter, Respondent was a licensed psychiatrist employed
3 at the Schuman-Liles Clinic in Fremont, California.

4 9. Respondent treated Patient A,¹ a 28 year old female, between August 2014 and July
5 2015 for depression, anxiety, insomnia, and mood instability.

6 10. On August 26, 2014, Patient A was first seen by Respondent for various complaints,
7 including depression, anxiety, insomnia, and panic attacks. Patient A disclosed childhood sexual
8 abuse at this first visit. Patient A provided Respondent with the names of her current
9 psychotherapist and past mental health provider.

10 11. Respondent diagnosed Patient A with Panic Disorder and Unspecified Mood
11 Disorder. Respondent did not obtain any symptom history, information on the nature of
12 concurrent psychotherapy, or any prior or concurrent treatment records to support his diagnoses.

13 12. Respondent did not diagnose complex Post Traumatic Stress Disorder (PTSD).²

14 13. Patient A was seen next by Respondent on September 25, 2014. The medical notes
15 for this visit are nearly identical to the August 26, 2014 medical notes with the same “cut and
16 paste” grammar and spelling errors.

17 14. Respondent saw Patient A again on January 22, 2015, March 31, 2015 and finally on
18 July 14, 2015. The medical notes for these visits again contain the same identical medical notes
19 with the grammar and spelling errors contained in the first visit. Minimal new patient
20 information was added to subsequent visits.

21 15. Respondent’s treatment plan consisted solely of psychotropic medications as the
22 intervention.

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26 ¹ The patient is designated in this document as Patient A to protect the patient’s privacy.
27 Respondent knows the name of the patient and can confirm the patient’s identity through
28 discovery.

² Even though Respondent did not diagnose Patient A with PTSD, Respondent later
treated Patient A with hypnotherapy for PTSD on July 14, 2015. (See paragraph 16.)

- 1 E. Respondent did not provide Patient A with any information regarding his training,
2 experience, or qualifications to perform hypnotherapy and/or sexualized
3 hypnotherapy.
4 F. Respondent violated sexual boundaries in the manner in which he conducted the
5 sexualized hypnotherapy.
6 G. Respondent failed to collaborate with Patient A's current psychotherapist before
7 engaging in sexualized hypnotherapy.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Inadequate Record Keeping)**

10 22. Respondent is guilty of unprofessional conduct and subject to disciplinary action
11 under section 2266 (inadequate records) of the Code in that Respondent engaged in the conduct
12 described above including, but not limited to, the following:

- 13 A. Respondent's cut and paste medical notes from Patient A's first medical visit are used
14 in all subsequent visits with minimal new information.
15 B. Respondent did not document the July 14, 2015 hypnotherapy in Patient A's medical
16 records at Schuman-Liles Clinic.
17 C. Respondent kept "off the books" personal handwritten notes of the July 14, 2015
18 hypnotherapy which are illegible and incoherent.
19 C. There is no documentation of a PTSD diagnosis for which Respondent based his
20 rationale for treatment of Patient A with sexualized hypnotherapy.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Medical Board of California issue a decision:

- 24 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 45056,
25 issued to Kermit Dale Johnson, M.D.;
- 26 2. Revoking, suspending or denying approval of Kermit Dale Johnson, M.D.'s authority
27 to supervise physician assistants and advanced practice nurses;
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3. Ordering Kermit Dale Johnson, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: May 8, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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