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STATE OF WISCONSIN
BEFORE THE PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY

PROCEEDINGS AGAINST:

RUSSEL R. KANIA,

FINAL DECISION AND ORDER

RESPONDENT

LS0007111PSY

The State of Wisconsin, Psychology Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Psychology Examining Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 11th day of October, 2000.

Barbara Van Horne

A Member of the Board

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST :

RUSSELL R. KANIA

PROPOSED DECISION AND ORDER

RESPONDENT

LS0007111PSY

PARTIES

The parties to this action for the purposes of s. 227.53 Stats., are:

Russell R. Kania

2925 North Downer Avenue

Milwaukee, WI 53211

John R. Zwieg

Department of Regulation and Licensing

Division of Enforcement

P.O. Box 8935

Madison, Wisconsin 53708-8935

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on August 15, 2000, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney John R. Zwieg. The respondent, Russell R. Kania, failed to file an answer to the complaint and did not appear at the hearing.

Based on the entire record of this case, the undersigned administrative law judge recommends that the Psychology Examining Board adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Russell R. Kania, Respondent, date of birth July 26, 1938, is licensed by the Wisconsin Psychology Examining Board for the private practice of school psychology in the state of Wisconsin pursuant to license number 97, which was first granted March 19, 1979.
2. Respondent's last address reported to the Department of Regulation and Licensing is 2925 N. Downer Avenue, Milwaukee, WI 53211.
3. Pursuant to §§ 440.08(2)(a)63., and 455.06, Stats., each person licensed for the private practice of school psychology in the state of Wisconsin must renew that license biennially, by October 1 of each odd numbered year.
4. Wis. Adm. Code § Psy 4.01 states that in order to be qualified to renew the license, the licensee must have met the continuing education requirements specified in Wis. Adm. Code § Psy 4.02.
5. Wis. Adm. Code § PSY 4.02(1), promulgated pursuant to §§ 455.06 and 455.065, Stats., requires each licensee to complete at least 40 hours of board-approved continuing education in each biennial registration period to be eligible to register for the next biennial registration period.
6. Prior to October 1, 1999, the Wisconsin Department of Regulation and Licensing sent Respondent a form to execute and return with the required fee if Respondent wished to renew his license for the private practice of school psychology in the state of Wisconsin for the October 1, 1999 through September 30, 2001 biennium.
7. That renewal form contains the following language, immediately above the line which Respondent was to date

and sign:

"I have or will have completed 40 contact hours of board-approved continuing education, including 8 hours in ethics, during the biennium immediately preceding this application (10/1/97-9/30/99), and I have or will have evidence of this which I will furnish to the Psychology Examining Board upon request."

8. Respondent signed and returned the renewal form certifying that Respondent had completed the continuing education requirements of the Psychology Examining Board during the October 1, 1997 through September 30, 1999 biennium. Based on Respondent's representations, the Board granted renewal of Respondent's license.
9. The Bureau of Health Service Professions, in conducting a random audit on behalf of the Psychology Examining Board, sent letters to Respondent on November 24, and December 6, 1999, requesting Respondent to send the Board verification that Respondent had completed the 40 hours of continuing education, which Respondent had claimed to have completed prior to renewing Respondent's license for the October 1, 1999 through September 30, 2001 biennium.
10. Respondent did not respond to the November 24, and December 6, 1999 requests for verification that Respondent had completed the required continuing education.
11. On January 19, 2000, as follow-up to the November 24, and December 6, 1999 audit letters, Respondent was sent a third letter requesting Respondent to send the Board verification that Respondent had completed the 40 hours of continuing education. That letter noted that Respondent had not responded to the earlier letters.
12. Respondent did not respond to that third request for verification that Respondent had completed the required continuing education.
13. Because Respondent failed to respond to any of the audit letters, the Board requested that the Division of Enforcement conduct an investigation and possible prosecution on behalf of the Board, and investigative file 00 PSY 017 was opened on May 1, 2000.
14. On May 12, 2000, the Division wrote to Respondent and advised Respondent that, if Respondent did not provide proof by May 30, 2000 that Respondent had completed the required continuing education, the Division would take appropriate action against Respondent. Respondent was also advised that if Respondent did not respond within thirty days, the Division would include a count in a disciplinary complaint that Respondent failed to cooperate with this investigation. The letter cited and quoted Wis. Adm. Code § Psy 5.01(24).
15. Respondent did not respond to the May 12, 2000 letter from the Division.
16. On June 19, 2000, the Division sent another letter by certified mail, return receipt requested, requesting that Respondent send verification of the required continuing education and that he explain why he failed to respond to any and all of the earlier letters.
17. On June 23, 2000, the Division received the return receipt card which had been signed by Respondent on June 21, 2000, acknowledging receipt of the June 19, 2000 letter.
18. To this date, Respondent has not responded to any of the letters from the Bureau or the Division.

CONCLUSIONS OF LAW

1. The Psychology Examining Board has jurisdiction in this matter pursuant to s. 455.09, Stats.
2. By failing to file an Answer as required by Wis. Admin. Code RL 2.09, and by failing to appear at the hearing, Kania is in default under Wis. Admin. Code RL 2.14, and the Psychology Examining Board may make findings and enter an order on the basis of the Complaint and the evidence presented at the hearing.
3. By failing to respond in a timely manner to the investigation seeking verification that Respondent had completed the required continuing education, Respondent has committed unprofessional conduct and is subject to discipline pursuant to Wis. Adm. Code § PSY 5.01(24) and § 455.09(1)(g), Stats.
4. By stating on the license renewal form "I have or will have completed 40 contact hours of board-approved continuing education, including 8 hours in ethics, during the biennium immediately preceding this application (10/1/97-9/30/99), and I have or will have evidence of this which I will furnish to the Psychology Examining Board upon request," and by not having completed the 40 hours of continuing education and by not providing the verification when requested, Respondent is subject to discipline pursuant to § 455.09(1)(d), Stats., for using fraud in the application for a license.
5. By failing to obtain 40 contact hours of board-approved continuing education during the biennium immediately preceding his application for the renewal of his license for the October 1, 1999 through September 30, 2001 biennium, as required by Wis. Adm. Code § PSY 4.01, is subject to discipline pursuant to Wis. Adm. Code § PSY

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the credential of Russell R. Kania, license number 97, is **SUSPENDED** until such time as he submits evidence to the board of having complied with the continuing education requirements of Wis. Adm. Code § PSY 4.01. Costs are awarded to Complainant.

OPINION

Section RL 2.14 of the Wisconsin Administrative Code provides that a respondent who fails to answer a complaint or fails to appear at a hearing is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent. In this case, Kania did not file an answer to the above-captioned complaint, nor did he appear at the scheduled hearing. As a result, Kania is in default. The attorney for the complainant moved for default at the hearing, and the motion was granted.

It has been requested that the discipline to be imposed be that of suspension until such time as Kania submits evidence to the board demonstrating compliance with the continuing education requirements of Wis. Adm. Code § PSY 4.01. That request is reasonable.

In determining the appropriate discipline for Kania, the nature of the charges and the current status of licensure are relevant. All disciplinary determinations are to be guided by the three oft quoted guidelines: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*. 41 Wis. 2d 481, 485 (1969).

There is nothing in the record to suggest that imposing greater discipline would have a rehabilitative effect on Kania. Mere punishment alone is not appropriate as a reason for discipline. Kania has clearly demonstrated based upon the factual record in this case that he does not wish to either comply with the continuing education requirements mandated by licensure, or cooperate with the board in its investigation. The five unsuccessful attempts to obtain a response from Kania to determine his compliance with obtaining required continuing education lead to the reasonable inference that Kania has not meet the requirements of Wis. Adm. Code § PSY 4.01, and that he used fraud in the application for a license in contravention of s. 455.09(1)(d), Stats. The thirty-day response requirement to each agency communication, imposed on Kania by Wis. Adm. Code § PSY 5.01(24), has likewise been ignored. Even after the filing and service of the complaint, Kania did not avail himself of the opportunity to respond by answer or appearance to demonstrate his continuing education compliance.

Suspension of Kania's license will hold safe the citizens of Wisconsin's health, safety and welfare. The purpose of continuing education is to insure that a licensee obtains and maintains education such that the licensee will practice the profession in a minimally competent manner. The granting of a license provides a licensee with the privileges attendant thereto, but the license also comes with responsibility, as in this instance, continuing education. Kania has amply demonstrated that he currently desires neither the privileges nor the responsibility of license number 97.

Dated at Madison, Wisconsin, September 15, 2000

STATE OF WISCONSIN

DEPARTMENT OF REGULATION & LICENSING

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William Anderson Black

Administrative Law Judge

