

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST : : FINAL DECISION  
 : : AND ORDER  
SAMY A. ELAWADY, : : LS0808292RLA  
RESPONDENT. : :

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Division of Enforcement Case Nos. 08 RLA 001 & 08 RLA 002

The State of Wisconsin, Department of Regulation and Licensing, 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, Department of Regulation and Licensing.

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 6<sup>th</sup> day of March, 2009.

Celia M. Jackson, Secretary  
Department of Regulation and

Licensing

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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:  
IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST :  
SAMY A. ELAWADY, :  
RESPONDENT. :  
:

**PROPOSED DECISION**  
**AND ORDER**  
Case No. LS-0808292-RLA

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Division of Enforcement Case Numbers 08 RLA 001 & 08 RLA 002

**PARTIES**

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

Complainant:

Division of Enforcement  
Department of Regulation and Licensing  
1400 East Washington Ave.  
Madison, WI 53708-8935

Respondent:

Samy A. Elawady  
7513 Milwaukee Avenue  
Milwaukee, WI 53213

Disciplinary Authority:

Department of Regulation and Licensing  
1400 East Washington Ave.  
Madison, WI 53703

**PROCEDURAL HISTORY**

A. The Complaint in this matter was filed on August 29, 2008. A Notice of Hearing was sent to the Respondent, Samy A. Elawady, at his address of record with the Department, 7513 Milwaukee Avenue, Milwaukee, WI 53213, informing him that a hearing on the Complaint was scheduled for September 25, 2008. The Notice of Hearing also informed Mr. Elawady that he was required to file an Answer to the Complaint within 20 days, failing which "you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence and the Department may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

B. No Answer was filed by Mr. Elawady.

C. The hearing in this matter was held as scheduled on September 25, 2008. Mr. Elawady did not appear.

**FINDINGS OF FACT**

1. Samy A. Elawady, Respondent, date of birth September 4, 1944, is certified by the Wisconsin Department of Regulation and Licensing as an acupuncturist in the state of Wisconsin. Mr. Elawady holds certificate number 247, which was first granted July 14, 1999.

2. Mr. Elawady's last address reported to the Department of Regulation and Licensing is 7513 Milwaukee Avenue, Milwaukee, WI 53213.

3. During the events related in Counts I through VI, Mr. Elawady worked as an acupuncturist at the Oriental Wellness Center and Spa (Wellness Center) in Pewaukee, Wisconsin and the Lake Country Health Center (Health Center) in Delafield, Wisconsin.

#### COUNT I

4. In October 2007, when she was 27 years old, Ms. A began receiving massage therapy services at the Wellness Center. Ms. A had never had acupuncture before. She purchased a 10-visit acupuncture package and had appointments with Mr. Elawady on: October 23, 2007; November 1, 8, 15, 20 and 29, 2007; December 6 and 13, 2007.

5. During her October 23, November 1, 15, 20 and 29, and December 13 appointments:

a. Ms. A lay face up on the treatment table in her bra, panties and gown and Mr. Elawady cleaned Ms. A's body with alcohol and applied needles to her forehead, wrists, legs, feet, stomach, under her breasts and near her pubic area.

b. Mr. Elawady then placed heat lamps above Ms. A and she lay there alone for approximately 20-30 minutes. Mr. Elawady returned to the room, removed the needles and gently rubbed Ms. A's body where the needles had been.

c. Mr. Elawady then had Ms. A sit up facing away from him and he rubbed her low back and shoulders and massaged her head.

6. During the November 8 and December 6 appointments, the procedure was the same except that:

a. While Ms. A lay on the treatment table and Mr. Elawady was inserting the needles under her breasts, he pulled her bra off her breasts and left them exposed. He placed the needles the same as during the other appointments and Ms. A felt extremely uncomfortable and wondered to herself why her breasts needed to be exposed.

b. Later, Mr. Elawady removed the needles and performed his usual rub down. However, when Mr. Elawady removed the needles from under Ms. A's breasts, he grabbed her breasts and held them tightly. He then began massaging her breasts.

c. Ms. A was shocked and did not understand why he was doing this. She initially felt that because he was a professional, he would not do anything inappropriate to his clients. After the second time it happened, Ms. A became completely confused and scared, and was not sure what to do.

7. Ms. A went to one more appointment on December 13, during which Mr. Elawady acted appropriately and did not expose or fondle Ms. A's breasts. But after that appointment, Ms. A decided not to return to the Center and cancelled her remaining appointments.

8. Mr. Elawady had no legitimate purpose for exposing or touching Ms. A's breasts during the treatment and did not seek or receive Ms. A's consent to do so.

#### COUNT II

9. Between October and November 2007, Ms. B received acupuncture from Mr. Elawady at the Wellness Center. During her third and fourth appointments, Mr. Elawady placed his hands directly on Ms. B's breasts and massaged them.

10. Mr. Elawady had no legitimate purpose for touching Ms. B's breasts during the treatment and did not seek or receive Ms. B's consent to do so.

#### COUNT III

11. In October or November 2007, Ms. C received acupuncture from Mr. Elawady at the Wellness Center. During treatment, Mr. Elawady placed his hands directly on Ms. C's breasts and massaged them.

12. Mr. Elawady had no legitimate purpose for touching Ms. C's breasts during the treatment and did not seek or receive Ms. C's consent to do so.

#### COUNT IV

13. Ms. D purchased 12 acupuncture appointments from Mr. Elawady at the Health Center. The first appointment was October 24, 2007 and the first six appointments were uneventful. At the seventh appointment on December 12, 2007, Mr. Elawady placed his hands directly on Ms. D's breasts and massaged them. During the next appointment on January 9, 2008, Mr. Elawady repeatedly placed his hands directly on Ms. D's breasts and massaged them.

14. Mr. Elawady had no legitimate purpose for touching Ms. D's breasts during the treatment and did not seek or receive Ms. D's consent to do so.

#### COUNT V

15. Ms. E had received acupuncture from Mr. Elawady for more than three years prior to August or September 2007, when during an appointment at the Health Center, Mr. Elawady placed his hands directly on Ms. E's breasts and massaged them. This had never occurred before.

16. Mr. Elawady had no legitimate purpose for touching Ms. E's breasts during the treatment and did not seek or receive Ms. E's consent to do so.

#### COUNT VI

17. Ms. F received acupuncture from Mr. Elawady at the Health Center on September 19, 2007. During that appointment, Mr. Elawady placed his hands directly on Ms. F's breasts and massaged them. As Ms. F got up off the table, Mr. Elawady, without any warning, kissed her on the mouth.

18. Mr. Elawady had no legitimate purpose for touching Ms. F's breasts during the treatment and did not seek or receive Ms. F's consent to do so.

#### ALL COUNTS

19. As a result of Mr. Elawady's conduct set out in Counts I through VI, Mr. Elawady was charged in Waukesha County Circuit Court case number 2008CM0695 with nine Counts of 4<sup>th</sup> Degree Sexual Assault.

20. In the criminal matter, a jury trial was set to begin on July 22, 2008. On July 21, Mr. Elawady did not appear and his bond was forfeited and a bench warrant was issued for him. Mr. Elawady's whereabouts are unknown to the authorities.

21. Mr. Elawady, was served, under the requirements of sec. RL 2.08 (1), Wis. Admin. Code, with the Complaint and Notice of Hearing in this matter on August 29, 2008.

22. Mr. Elawady did not file an Answer to the Complaint within 20 days of service as required by sec. RL 2.09, Wis. Admin. Code, and as explained in the Notice of Hearing, nor did Mr. Elawady appear for the hearing in this matter.

#### **CONCLUSIONS OF LAW**

I. The Department of Regulation and Licensing is the legal authority responsible for issuing and controlling certificates for acupuncturists, under sec. 451.14, Stats., and it has jurisdiction over this hearing regarding a disciplinary complaint against a certificate-holder under that section.

II. The Department of Regulation and Licensing has personal jurisdiction over the respondent, Samy A. Elawady, based on his holding a certificate issued by the department, and based on notice under sec. 801.04 (2), Stats., and sec. RL 2.08, Wis. Admin. Code.

III. Service of the Complaint and Notice of Hearing on Samy A. Elawady was sufficient under sec. 440.11 (2), Stats., and sec. RL 2.08, Wis. Admin. Code.

IV. By failing to file an Answer to the Complaint in this matter within 20 days of service, and by failing to appear for the

hearing in this matter, Samy A. Elawady is in default as defined by sec. RL 2.14, Wis. Admin. Code.

V. Mr. Elawady's conduct with Ms. A violated Wis. Stat. sec. 940.225 (3m), 4<sup>th</sup> Degree Sexual Assault, a law the circumstances of which substantially relate to the practice of acupuncture, which is grounds for discipline pursuant to Wis. Adm. Code sec. RL 73.01(2) and Wis. Stat. sec. 451.14(2)(g).

VI. Mr. Elawady's conduct with Ms. B violated Wis. Stat. sec. 940.225 (3m), 4<sup>th</sup> Degree Sexual Assault, a law the circumstances of which substantially relate to the practice of acupuncture, which is grounds for discipline pursuant to Wis. Adm. Code sec. RL 73.01(2) and Wis. Stat. sec. 451.14(2)(g).

VII. Mr. Elawady's conduct with Ms. C violated Wis. Stat. sec. 940.225 (3m), 4<sup>th</sup> Degree Sexual Assault, a law the circumstances of which substantially relate to the practice of acupuncture, which is grounds for discipline pursuant to Wis. Adm. Code sec. RL 73.01(2) and Wis. Stat. sec. 451.14(2)(g).

VIII. Mr. Elawady's conduct with Ms. D violated Wis. Stat. sec. 940.225 (3m), 4<sup>th</sup> Degree Sexual Assault, a law the circumstances of which substantially relate to the practice of acupuncture, which is grounds for discipline pursuant to Wis. Adm. Code sec. RL 73.01(2) and Wis. Stat. sec. 451.14(2)(g).

IX. Mr. Elawady's conduct with Ms. E violated Wis. Stat. sec. 940.225 (3m), 4<sup>th</sup> Degree Sexual Assault, a law the circumstances of which substantially relate to the practice of acupuncture, which is grounds for discipline pursuant to Wis. Adm. Code sec. RL 73.01(2) and Wis. Stat. sec. 451.14(2)(g).

X. Mr. Elawady's conduct with Ms. F violated Wis. Stat. sec. 940.225 (3m), 4<sup>th</sup> Degree Sexual Assault, a law the circumstances of which substantially relate to the practice of acupuncture, which is grounds for discipline pursuant to Wis. Adm. Code sec. RL 73.01(2) and Wis. Stat. sec. 451.14(2)(g).

## **ORDER**

IT IS HEREBY ORDERED that the certificate to practice as an acupuncturist in the State of Wisconsin granted to the Respondent, Samy A. Elawady, is hereby REVOKED.

IT IS FURTHER ORDERED that the Respondent, Samy A. Elawady, pay the full costs of the Department's investigation and prosecution of this matter. Payment shall be made by certified check or money order and sent to  
Department Monitor  
Department of Regulation and Licensing,  
PO Box 8935, Madison, WI 53708-8935.  
Fax (608) 266-2264  
Tel. (608) 267-3817.

## **ANALYSIS**

This is a class 2 proceeding under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Department's Division of Enforcement filed a Complaint alleging professional misconduct by Mr. Elawady. The Notice of Hearing stated that he could be found to be in default if he did not respond to the complaint by filing an Answer.

Even though Mr. Elawady did not respond to the Complaint, the Administrative Rules contain provisions to permit the Department and other credentialing authorities to act to protect the public even in the face of a respondent's non-response, or even disappearance. Service is considered legally adequate if mailed to the last-known address, and when a person fails to file an answer or to appear at a hearing, the person may be found to be "in default" and the Board "may make findings and enter an order on the basis of the complaint and other evidence." This is similar to the standard in civil court cases in which allegations in a complaint that are not denied are deemed admitted, sec. 802.02 (4), Stats., and "if no issue of law or fact has been joined" a default judgment may be entered, sec. 806.02 (1), Stats.

The default rule contains a safeguard that is especially important in a case like this where the respondent has presented neither his side of the case nor any facts or circumstances to be considered in his defense. The rule says, “The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.” There is no definition of what constitutes “a reasonable time”, but if Mr. Elawady contacts the Department at any time with an explanation for his non-responsiveness, the Department should review and consider his communication. The Department will then have the option of re-opening this matter and allowing Mr. Elawady to defend himself against the Complaint. And after considering all the evidence presented, the Department would have the option of revising its order.

Based on all the procedural steps explained above, the allegations in the Complaint are deemed proven. Mr. Elawady is found to have committed multiple acts of 4<sup>th</sup> Degree Sexual Assault against acupuncture patients. These are violations of law that are substantially related to the practice of acupuncture, contrary to sec. RL 73.01 (2), Wis. Admin. Code. They are also offenses committed while certified as an acupuncturist, for which he has been arrested, contrary to sec. 451.14 (2) (c), Wis. Stats. Discipline is appropriate. Mr. Elawady’s silence in a matter involving serious allegations of sexual assault and his disappearance in the criminal prosecution make revocation the most appropriate discipline.

Under sec. 440.22, Stats., when discipline is imposed on a credential-holder, the Department has the authority to impose all or part of the costs of a proceeding on the credential-holder. The Board is directed to exercise discretion in its imposition of costs by considering certain factors, including the number of counts charged, contested, and proven; the nature of the misconduct; the level of discipline; the respondent’s cooperation with the disciplinary process; prior discipline; and other relevant circumstances. In this case, the misconduct is serious, the level of discipline is relatively high, and the respondent did not cooperate with the disciplinary process (albeit through a total absence of communication). The record contains no ameliorating circumstances. Given this balance of positive and negative factors, the proposed order includes a provision that Mr. Elawady pay the Department’s full costs of investigating and prosecuting this matter.

## **APPLICABLE STATUTES AND RULES**

### **Statutes**

#### 451.14 Disciplinary proceedings and actions.

(1) Subject to the rules promulgated under s. 440.03 (1), the department may make investigations or conduct hearings to determine whether a violation of this chapter or any rule promulgated under this chapter has occurred.

(2) Subject to the rules promulgated under s. 440.03 (1), the department may reprimand a certified acupuncturist or deny, limit, suspend or revoke a certificate under this chapter if it finds that the applicant or certified acupuncturist has done any of the following:

...  
(c) Subject to ss. 111.321, 111.322 and 111.335, been arrested or convicted of an offense committed while certified as an acupuncturist.

...  
(g) Violated this chapter or any rule promulgated under this chapter.

#### 440.22 Assessment of costs.

...  
(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. ....

### **Wisconsin Administrative Code**

#### RL 73.01 Grounds for denial of certification or discipline.

For purposes of s. 451.14 (2)(b), Stats., engaging in conduct while practicing acupuncture that evidences a lack of knowledge or ability to apply professional principles or skills includes, but is not limited to:

...

(2) Violating, or aiding or abetting violation of any law, the circumstances of which substantially relate to the practice of acupuncture or other healing art.

....

RL 2.08 Service and filing of complaint, notice of hearing and other papers.

(1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

...

RL 2.09 Answer.

...

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

RL 2.14 Default.

If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

Dated and signed: February 13, 2009

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Nick Schweitzer  
Administrative Law Judge  
Department of Regulation and Licensing