

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE PROFESSIONAL COUNSELOR SECTION  
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING  
AND SOCIAL WORK EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
SCOTT ANTHONY GILBERTSON, L.P.C.,	:	
	:	Case No. LS 0609082 CPC
RESPONDENT.	:	

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[Division of Enforcement Case # 05 CPC 010]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Scott Anthony Gilbertson, L.P.C.  
1428 S. 9<sup>th</sup> Street  
Sheboygan, WI 53081

Division of Enforcement  
Department of Regulation and Licensing  
1400 East Washington Avenue  
PO Box 8935  
Madison, WI 53708-8935

Professional Counselor Section  
Marriage and Family Therapy, Professional Counseling  
and Social Work Examining Board  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

PROCEDURAL HISTORY

A disciplinary complaint was filed with an Administrative Law Judge and served upon Respondent by mail on September 2, 2006. Respondent has not filed an Answer to the complaint.

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision in this matter, subject to the approval of the Professional Counselor Section. The Section has reviewed this Stipulation and considers it acceptable.

Accordingly, the Section adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Scott Anthony Gilbertson, L.P.C., Respondent, date of birth June 21, 1969, is licensed by the Professional Counselor Section as a professional counselor in the state of Wisconsin pursuant to license number 2789, which was first granted January 21, 1999. (Prior to a statutory change effective 11/01/02, Respondent's credential was a certificate as a professional counselor.)

2. Respondent's last address reported to the Department of Regulation and Licensing is 1428 S. 9<sup>th</sup> Street, Sheboygan, WI 53081.

3. From October 1999 until his employment was terminated on June 3, 2005, Respondent was employed by the State of Wisconsin Department of Workforce Development (DWD) as a Vocational Rehabilitation Counselor for the Division of Vocational Rehabilitation (DVR) in Madison, Wisconsin. Respondent's responsibilities included provision of vocational rehabilitation services to persons with disabilities, including but not limited to: vocational counseling and planning; arranging for vocational evaluation and training, and providing job placement and follow-up to job-ready clients.

COUNT I

4. In 2003, Ms. A became visually impaired with no useable vision as a result of side effects of anti-rejection medications used following kidney/pancreas transplant surgery. Ms. A also suffers from major depression, anxiety attacks, insomnia, PTSD, and diabetic neuropathy. Ms. A then received vocational rehabilitation services from Respondent, who is also visually impaired, from approximately February 2004 until April 2005.

5. During 2004, while attending classes at North Central Technical College (NCTC) in Wausau, Wisconsin, Ms. A had an extramarital affair with Mr. B, which contributed to divorce from her then husband and upset her parents with her life choices.

6. In early 2005, Ms. A contacted Respondent about continuing with her rehabilitation. Respondent agreed to help Ms. A with her rehabilitation goals and to assist her in returning to school at NCTC.

a. Respondent met with Ms. A and her parents to develop a plan and discuss conditions for her to return to school.

b. Respondent told Ms. A that one of the conditions of receiving DVR services was that she file for a restraining order to keep Mr. B from contacting her.

c. Ms. A did not want to file for a restraining order, but felt she had to follow Respondent's conditions or she would lose her DVR assistance.

d. Respondent told Ms. A numerous times that unless she did as he told her, he would pull her from the DVR program, and that he held the "purse strings" for her benefits in the DVR system.

e. On April 25, Ms. A filed a petition for a temporary restraining order against Mr. B. Court records show that when she appeared at the hearing on April 29, she asked that her petition be dismissed and the court did so.

f. In order to keep her benefits, Ms. A falsely told Respondent the judge dismissed the petition because she had filed it incorrectly.

7. DVR arranged for Ms. A to reside at the Baymont Inn in Wausau while she attended school. She arrived there on April 24, 2005 and Respondent was in Wausau on another matter. They had agreed he would meet her and assist with her registration for classes. Ms. A called Respondent when she arrived and he invited her to dinner with him and his father. Ms. A agreed and they went to dinner, arriving back at the hotel at about 10:00 p.m. The following occurred:

a. Ms. A returned to her room alone. Within a few minutes, Respondent knocked on her door and said he wanted to talk to her about seeking the restraining order against Mr. B and the registration process. Respondent entered the room and sat in a chair.

b. After talking for a few minutes about the restraining order, Respondent began talking about sexual difficulties he and his wife were having, including a lack of sex. When Ms. A tried to change the subject, Respondent kept returning the conversation to the subject of sex.

c. When Ms. A handed Respondent a bottle of water, he grabbed her waist and pulled her down onto his lap. Respondent rubbed Ms. A's back and massaged her shoulders. Ms. A had on bib overalls and was not wearing a bra. Respondent rubbed under the straps of Ms. A's overalls and down her sides, making contact with the sides of her breasts. This made Ms. A uncomfortable and she stood up and sat on the bed. Respondent said "I'm not done yet" and Ms. A replied "Oh, yes you are."

d. Respondent's conversation with Ms. A continued to focus on personal things, such as how he missed seeing women and how they looked and how he was not sure what Ms. A looked like. He asked Ms. A several times to describe herself to him.

e. Ms. A got up off the bed to get more water. While she was doing so, Respondent moved from the chair and sat on the bed. Ms. A did not notice he had moved to the bed until she attempted to sit down. Respondent ran his hands up Ms. A's left hip; down her leg and up her inner thigh into her groin area. As Ms. A tried to walk away, Respondent said there was one more thing he needed to know. He then slipped his hands under Ms. A's overalls and cupped her breasts.

f. Ms. A backed up and told Respondent she was tired and he should leave. Before leaving, Respondent grabbed Ms. A, gave her a hug and rubbed her back.

8. In a May 9, 2005 telephone conversation with Ms. A, which she surreptitiously tape recorded, Respondent referred to touching her as "brailing" and said he did not usually touch girls.

9. As a result of his conduct, Respondent was discharged from his employment as a DVR counselor on June 3, 2005 for violation of DWD work rules.

## COUNT II

10. On July 20, 2005, as a result of his conduct described in Count I, Respondent was charged in Marathon County Circuit Court case number 2005CM001563 with violating Wis. Stat. § 940.225(3) [4<sup>th</sup> degree sexual assault] and Wis. Stat. § 947.01 [disorderly conduct].

11. On October 26, 2006, as part of a plea agreement, Respondent plead no contest to and was convicted of violating Wis. Stat. § 940.225(3) [4<sup>th</sup> degree sexual assault] and entered into a deferred prosecution agreement on the charge of Wis. Stat. § 947.01 [disorderly conduct].

12. Wis. Stat. § 940.225(3) [4<sup>th</sup> degree sexual assault] is a law which substantially relates to practice under Respondent's license.

## CONCLUSIONS OF LAW

1. The Professional Counselor Section of the Wisconsin Marriage and Family Therapy, Professional Counseling and Social Work Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 457.26(2) and has authority to enter into this stipulated resolution pursuant to Wis. Stat. § 227.44(5).

2. By engaging in the conduct set out in Finding of Fact 6, Respondent has committed unprofessional conduct as defined by Wis. Adm. Code § MPSW 20.02(22) for having engaged in gross negligence in practice and is subject to discipline pursuant to Wis. Stat. § 457.26(f).

3. By engaging in the conduct set out in Count I, Respondent has committed unprofessional conduct as defined by Wis. Adm. Code § MPSW 20.02(11) for having engaged in sexual contact, sexual conduct, or any other behavior with a client which could reasonably be construed as seductive, which subjects him to discipline pursuant to Wis. Stat. § 457.26(f).

4. As set out in Count II, Respondent has committed unprofessional conduct as defined Wis. Adm. Code § MPSW 20.02(2) for having violated a law substantially related to practice under Respondent's license, which subjects him to discipline pursuant to Wis. Stat. § 457.26(f).

### ORDER

1. The SURRENDER by Scott Anthony Gilbertson, L.P.C., Respondent, of his practice as a professional counselor in the state of Wisconsin is hereby ACCEPTED.

2. Respondent may seek licensure from the Professional Counselor Section after two years from the date of this Order, under the following terms and conditions:

a. Respondent shall meet all of the statutory and rule requirements for licensure in effect at the time of application.

b. Respondent shall have paid to the Department of Regulation and Licensing the costs of this proceeding in the amount of \$2,090 pursuant to Wis. Stat. § 440.22(2)

c. Respondent shall, at his own expense, have undergone an assessment by a mental health care practitioner with experience in assessing health care providers who have become involved sexually with patients or clients.

d. The practitioner performing the assessment shall not have treated Respondent and prior to the assessment being performed, must be approved by the Section or its designee, with an opportunity for the Division of Enforcement to make its recommendation.

e. Respondent must provide proof sufficient to the Section that Respondent can practice with reasonable skill and safety of clients and public.

f. If the Section determines to grant Respondent's application for license, Respondent's license shall be limited in a manner to address any concerns the Section has as a result of the conduct set out in the findings of fact and to address any recommendations resulting from the assessment, including, but not limited to:

i. Psychotherapy, at Respondent's expense, by a therapist approved by the Section, to address specific treatment goals, with periodic reports to the Section by the therapist.

ii. Additional professional education in any identified areas of deficiency.

iii. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a professional approved by the Section, with periodic reports to the Section by the supervisor.

3. If Respondent believes that the Section's refusal to grant his application for license is inappropriate or that any limitation imposed or maintained by the Section under paragraph 2f is inappropriate, Respondent may seek a class 1 hearing pursuant to Wis. Stat. § 227.01(3)(a) in which the burden shall be on Respondent to show that the Section's decision is arbitrary or capricious. The denial or limitations on Respondent's license shall remain in effect until there is a final decision in Respondent's favor on the issue.

4. Any requests, notices, proof or payments shall be mailed, faxed or delivered to:

Department Monitor  
Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Ave.  
P.O. Box 8935  
Madison, WI 53708-8935  
Fax: (608) 266-2264  
Telephone: (608) 267-3817

5. This Order is effective on the date of its signing.

Professional Counselor Section  
Wisconsin Marriage and Family Therapy,  
Professional Counseling and Social Work Examining Board

By: Evelyn Pumphrey  
A Member of the Section

1/30/07  
Date

STATE OF WISCONSIN  
BEFORE THE PROFESSIONAL COUNSELOR SECTION  
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING  
AND SOCIAL WORK EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
SCOTT ANTHONY GILBERTSON, L.P.C.,	:	
RESPONDENT.	:	Case No. LS 0609082 CPC

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[Division of Enforcement Case # 05 CPC 010]

It is hereby stipulated and agreed, by and between Scott Anthony Gilbertson, L.P.C., Respondent; and John R. Zwieg attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary proceeding against Respondent before the Professional Counselor Section. Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Respondent understands that by signing this Stipulation, he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.
3. Respondent has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Section. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Section's Order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Section, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Section, the parties agree not to contend that the Section has been prejudiced or biased in any manner by the consideration of this attempted resolution.
6. Attached to this Stipulation are Respondent's current wall and wallet registration certificates. If the Section accepts the Stipulation, Respondent's license shall be reissued at the time the suspension is terminated in accordance with the terms of the attached Final Decision and Order. If the Section does not accept this Stipulation, Respondent's certificates shall be returned to Respondent with a notice of the Section's decision not to accept the Stipulation.
7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Section ever assigned as a case advisor in this investigation may appear before the Section in open or closed session, without the presence of Respondent or his attorney, if any, for purposes of speaking in support of this agreement and answering questions that any member of the Section may have in connection with the Section's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Section should accept this Stipulation and issue the attached Final Decision and Order.
8. Respondent is informed that should the Section adopt this Stipulation, the Section's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.
9. The Division of Enforcement joins Respondent in recommending the Section adopt this Stipulation and issue the attached Final Decision and Order.

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Scott Anthony Gilbertson, L.P.C.

Respondent

1428 S. 9<sup>th</sup> Street

Sheboygan, WI 53081

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Date

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John R. Zwieg

Attorney for Complainant

Division of Enforcement

Department of Regulation and Licensing

P.O. Box 8935

Madison, WI 53708-8935

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Date