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STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST : : FINAL DECISION
 : : AND ORDER
ELIZABETH S. BUENZLI-FRITZ, D.C., : : LS0802183CHI
RESPONDENT. : :

Division of Enforcement Case No. 05CHI043

The State of Wisconsin, Chiropractic 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, Chiropractic Examining Board.

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 14th day of August, 2008.

Steven Silverman
Member of the Board
Chiropractic Examining Board

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS

ELIZABETH S. BUENZLI-FRITZ, D.C.,
RESPONDENT.

PROPOSED FINAL DECISION
AND ORDER

Case No. LS 0802183 CHI

DOE case # 05 CHI 043

PARTIES

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

Elizabeth S. Buenzli-Fritz
3115 County Highway E
Stitzer, WI 53825

Jeanette Lytle, Attorney for Complainant
Division of Enforcement
Department of Regulation & Licensing
P. O. Box 8935
Madison, WI 53708-8935

Chiropractic Examining Board
Department of Regulation & Licensing
P. O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A motion for default in the above-captioned matter was held on June 3, 2008, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney John R. Zweig. The respondent, Elizabeth S. Buenzli-Fritz, did not appear and did not file an answer to the complaint. Based on the entire record of this case, the undersigned administrative law judge recommends that the Chiropractic Examining Board adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Elizabeth S. Buenzli-Fritz, D.C., (DOB 03/03/1949) is licensed as a chiropractor in the State of Wisconsin (license # 12-2358). This license was first granted on December 1, 1988. Renewal was denied pursuant to Wis. Stat. § 440.12 due to a tax delinquency on or about September 4, 2002. Pursuant to Wis. Stat. § 73.0301, if Respondent submits a nondelinquency certificate, the Board must reinstate her license unless there are other grounds for denying reinstatement.
2. The respondent's most recent address on file with the Wisconsin Chiropractic Examining Board is 3115 County Highway E, Stitzer, Wisconsin, 53825.
3. On or about November 4, 2007, a Division of Enforcement investigator traveled to Fennimore Chiropractic at 1196 Lincoln Avenue in Fennimore, Wisconsin. She observed a picture window containing the words Fennimore Clinic, Dr. Elizabeth Buenzli-Fritz, Chiropractor. The entrance door noted office hours to be Mondays and Wednesdays, 8:00 a.m. to 8:00 p.m., and Tuesdays and Fridays, 8:00 a.m. to 5:00 p.m., Saturdays by appointment.
4. On or about November 14, 2007, a Division of Enforcement investigator traveled to Fennimore Chiropractic. She spoke to two patients who were waiting for treatment from Respondent. Then she interviewed respondent, who admitted that she was aware that her license was not current and that she had been practicing without a license in violation of law.

CONCLUSIONS OF LAW

1. The Wisconsin Chiropractic Examining Board has jurisdiction over this matter, pursuant to Wis. Stat. § 446.03 (5).
2. By failing to file an Answer as required by Wis. Admin. Code § RL 2.09, and by failing to appear at the default hearing, the respondent is in default under Wis. Admin. Code § RL 2.14, and the Chiropractic Examining Board may make findings and enter an order on the basis of the Complaint and the evidence presented at the motion for default hearing.
3. The conduct described in paragraphs 3 and 4 above violate Wis. Stat. § 446.03 (5) and Wisconsin Administrative Code § Chir 6.02 (25), constituting unprofessional conduct subjecting the respondent to discipline pursuant to Wis. Stat. § 446.03 (5).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the respondent's right to reinstate her license to practice as a chiropractor in Wisconsin, number #12-2358, upon submission of a non delinquency certificate pursuant to Wis. Stat. § 73.0301, is REVOKED.

IT IS FURTHER ORDERED that costs of this proceeding shall be assessed against the respondent.

OPINION

Applicable Wisconsin Statutes and Administrative Rule

Wis. Stat., § 446.03(5):

446.03 Reprimand; license revocation, limitation or suspension. The examining board, by order, may reprimand a licensee or registrant and may deny, limit, suspend or revoke any license or certificate of registration if the licensee or registrant:

(5) Is guilty of unprofessional conduct;

Wis. Admin. Code § Chir 6.02 (25):

(25) Violating any provision of ch. 446, Stats., or any rule or order of the board.

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, the respondent did not file an answer to the complaint, nor did she appear at the scheduled default hearing. As a result, the motion for a default judgment was granted at the time of the hearing.

The Division of Enforcement requested that the discipline to be imposed should be revocation of the right to renew the respondent's chiropractor license. The rationale for revocation was that the respondent has been unwilling to cooperate in the

investigation of this matter, evidenced ultimately by the failure to respond to the complaint. Further the respondent is practicing chiropractic without a license. The reason that the respondent's chiropractic license has not been renewed is because she has not paid taxes that she owes in this state. Hence, she is not fulfilling her duty in Wisconsin to pay her taxes, yet is illegally practicing chiropractic, a privilege she should not be exercising without an active credential. The respondent is therefore a scofflaw, and the only means to address her conduct is with the revocation suggested by the Division of Enforcement.

It is well established that the objectives of professional discipline include the following: (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). Revocation is warranted in this instance. The public must be protected from persons attempting to practice with inactive credentials.

Costs

Wis. Stat. § 440.22(2) provides in relevant part:

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. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Chiropractic Examining Board and that the board's discretion extends to the decision whether to assess the full costs or only a portion of the costs.

The ALJ's recommendation and the Chiropractic Examining Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder, like the supreme court's decision whether to assess the full costs of disciplinary proceedings against disciplined attorneys, see Supreme Court Rule 22.24(1m), is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties;
- 4) The respondent's cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licensees, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and
- 7) Any other relevant circumstances.

The respondent by nature of her being in default has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. To the contrary, her conduct is of a serious nature. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven, (being none), or that certain factual findings were investigated and litigated that were unnecessary. Given the fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licensees, fairness here dictates imposing the costs of disciplining the respondent upon the respondent and not fellow members of the chiropractor profession who have not engaged in such conduct.

Date: July 10, 2008

William Anderson Black
Administrative Law Judge

Buenzli-FritzPropDec7-10-08WAB-CHI