

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
DAVID J. PAKENHAM, L.C.S.W., : LS0801231SOC
RESPONDENT. :

[Division of Enforcement Case # 06 SOC 064]

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

David J. Pakenham, L.C.S.W.
Inmate #505679
Oshkosh Correctional Institution
P.O. Box 3310
Oshkosh, WI 54903

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

Social Worker 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

The Notice of Hearing and Complaint were filed in this matter on January 23, 2008. Prior to the hearing on the formal complaint, the parties in this matter agreed to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Social Worker 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. David J. Pakenham, L.C.S.W., Respondent, date of birth March 5, 1952, is currently licensed by the Social Worker Section as a clinical social worker in the state of Wisconsin pursuant to license number 2407, which was first granted March 11, 1994. (Prior to a statutory change effective 11/01/02, the credential was a certificate as an independent clinical social worker.)

2. Respondent was granted certification pursuant to the grand-parenting provisions of 1991 Act 160, § 21(2)(d). For this reason, Respondent did not take the examination otherwise required for certification.

3. Subsequent to the commencement of this action, Respondent notified the Department that his current address is Oshkosh Correctional Institution, Inmate #505679, P.O. Box 3310, Oshkosh, WI 54903.

4. Respondent was the defendant in Ashland County Wisconsin Circuit Court case number 2005CF000148:

a. On November 14, 2005, a Complaint was filed charging Respondent with one count of violating Wis.

Stat. § 948.05(1m), Sexual Exploitation of a Child.

b. The count was based on events of October 17, 2005 in which Respondent, using the name "therapistman1426," was logged into an internet chat room communicating with a person who presented himself as a 13-year-old girl, but who was actually an Ashland County Sheriff's Deputy. The conversation was sexual in nature and while communicating, Respondent sent the person 6 photographs. One of the photographs, "13ontick.jpeg" was of a girl, who appeared to the deputy to be 13 years old, engaging in sexual intercourse with a male. Another photograph, "@@@@teaching.jpeg" is of a girl who appeared to the deputy to be 13 years of age or younger engaged in other sexually explicit conduct.

c. On March 8, 2006, a preliminary hearing was held and the court found probable cause to believe Respondent had committed a felony and bound Respondent over for arraignment.

d. On March 15, 2006, the district attorney filed an Information charging Respondent with four counts of Sexual Exploitation of a Child.

e. On July 26, 2006, Respondent entered a plea of no contest to and was convicted of one count of Sexual Exploitation of a Child. The three other counts were dismissed but read in for consideration in sentencing.

f. At the sentencing on November 21, 2006, sentence was withheld and four years of probation was ordered, with the following conditions:

- (1) 90 days in jail to begin January 21, 2007, with work release privileges.
- (2) Counseling and treatment as directed by DOC.
- (3) No unsupervised contact with females under age 17.
- (4) No possession of pornographic materials.
- (5) No access of pornographic sites on internet.
- (6) Internet access only as approved by DOC.
- (7) Register as sex offender.
- (8) Obey Rules of Community Supervision imposed by DOC.

5. On April 8, 2007, Respondent returned to jail from work release with a blood alcohol level of .087. The consumption of alcohol was a violation of Rules of Community Supervision and his work release privilege was revoked and he was directed to seek AODA treatment.

6. On July 24, 2007, Respondent's probation was revoked based on Respondent:

- a. Maintaining a "myspace" internet account without his agent's permission.
- b. Accessing the internet without permission of his agent.
- c. Having sexually explicit pictures on his laptop computer.
- d. Consuming alcohol on multiple occasions.
- e. Establishing profiles on internet dating sites, without his agent's permission.
- f. Having consensual sex with a woman without his agent's permission.
- g. Accessing www.cum4mommy.com and www.teensinlaw.com, sexually explicit websites.
- h. Engaging in a sexually explicit internet conversation with "Dottie."
- i. Taking pictures of his penis with his cell phone camera and storing them on his phone.

7. On August 28, 2007, Respondent was sentenced to three years in prison on the count of Sexual Exploitation of a Child in Ashland County Circuit Court Circuit Court case number 2005CF 000148. Respondent is presently incarcerated in the Oshkosh Correctional Institution.

8. Wis. Stat. § 948.05(1m), Sexual Exploitation of a Child, is a law the circumstances of which substantially relate to Respondent's practice of social work under his license.

CONCLUSIONS OF LAW

1. The Social Worker 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. Respondent, by having been convicted of sexual exploitation of a child, violated a law the circumstances of which substantially relate to the practice under his credential and has engaged in unprofessional conduct as defined by Wis. Admin. Code § MPSW 20.02(2) and is subject to discipline pursuant to Wis. Stat. § 457.26(2)(f).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The SURRENDER by David J. Pakenham, L.C.S.W., Respondent, of his license as a clinical social worker in the state of Wisconsin is hereby ACCEPTED.

2. If Respondent shall ever apply for any credential from the Wisconsin Social Worker Section:

a. He shall be required to meet all requirements for that credential which are then required by statute and administrative rule, prior to being credentialed.

b. He shall provide proof sufficient to the Section that he does not suffer from any psychological condition which impairs his ability to safely function as a social worker.

c. The decision whether to grant Respondent a credential, with or without limitations, shall be in the sole discretion of the Section.

d. He shall have paid to the Department of Regulation and Licensing costs of this proceeding in the amount of \$1,190.00, pursuant to Wis. Stat. § 440.22(2).

3. Payment and any submissions required by this Order shall be mailed, faxed or delivered to:

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

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

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

By: Mary Jo Walsh
A Member of the Section

4/23/08
Date

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

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : STIPULATION
DAVID J. PAKENHAM, L.C.S.W., : LS 0801231 SOC
RESPONDENT. :

[Division of Enforcement Case # 06 SOC 064]

It is hereby stipulated by and between David J. Pakenham, L.C.S.W., 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 disciplinary proceeding against Respondent's licensure by the Division of Enforcement (file 06 SOC 064). Respondent consents to the resolution of this matter by stipulation and without a hearing.

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 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 may appear before the Section in open session, without the presence of the 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.

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 that the Section adopt this Stipulation and issue the attached Final Decision and Order.

David J. Pakenham, L.C.S.W.

Date

Respondent
Inmate #505679
Oshkosh Correctional Institution
P.O. Box 3310
Oshkosh, WI 54903

John R. Zwiig
Attorney for Complainant
Division of Enforcement
Department of Regulation & Licensing
P.O. Box 3935
Madison, WI 53708-8935

Date