

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE DENIAL OF :
THE APPLICATION FOR CERTIFICATE OF : FINAL DECISION AND ORDER
:
ZACHARY MITCHELL, : LS0906021RSA
RESPONDENT. :

Division of Enforcement Case # 09 RSA 010

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

Zachary Mitchell
2522 West Capital Drive, # 19
Milwaukee, WI 53206

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

Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A class 1 hearing was commenced in this matter by the filing of a Notice of Hearing on June 2, 2009. Prior to the hearing, the parties in this matter agreed to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Secretary. The Secretary has reviewed this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Zachary Mitchell (DOB 03/27/1971) resides at 2522 W. Capitol Drive # 19, Milwaukee, Wisconsin, 53206.
2. Mr. Mitchell applied for a certificate as a substance abuse counselor-in-training (application #327300) in or about November, 2008. Respondent appropriately disclosed, on his application, that he had been convicted of felony robbery, felony robbery with use of force, misdemeanor theft, felony robbery with threat of force, and felony armed robbery with threat of force. He disclosed that he had spent time in prison for these convictions.
3. On or about January 13, 2009, the Department sent Mr. Mitchell a letter requesting additional information about his convictions. Mr. Mitchell complied in all respects with this request. Among other information, he provided a statement that indicated that his convictions were directly related to his drug addiction and were the result of drug-seeking behaviors.
4. In addition, Mr. Mitchell provided letters of reference and recommendation, all of which indicate that he has

undergone treatment for his drug addiction and he is now living a healthy lifestyle and taking responsibility for his prior actions. A letter from his parole agent indicated that Respondent had been following all conditions of parole, and praised his attempts to further his education and career.

6. On or about March 2, 2009, the Department notified Mr. Mitchell that his application for certification was denied, on the grounds that his convictions were substantially related to the practice of a substance abuse counselor-in-training. Mr. Mitchell appealed that decision in a timely manner.

7. Mr. Mitchell has since provided additional information, including letters of recommendation from employers, counselors, and church leaders. Comments include:

“Zachary has strong gifts in the area of personal counseling and a very teachable spirit.”

“He has excellent communication skills, is continually desiring to learn, and has a very pleasant and outgoing personality.”

“One of his greatest strengths is his strong desire to give back and to make a difference in the lives of others – specifically minority young people who have few healthy role models.”

“Mr. Mitchell . . . speaks constantly of his past mistakes, not as a crutch and not with excuses; but as a catalyst to help other young men not journey down the same path he did.”

“We would recommend Zach for any position that would help other men and women in their recovery.”

“He always reports to work with a great disposition, and shows genuine concern for the youth that are here at the Center.”

“Individuals who have maintained their mid-range abstinence 90 days to 2 years have a diminished risk of relapse and a greater success rate for engaging in new activities and tolerating stress. They have moved towards stability and they have an increased capacity for long range planning. They are often ready to engage in active job seeking, or begin working towards long term vocational goals by acquiring new skills and knowledge (Young, 2000). Though Mr. Mitchell is still under supervision, we believe strongly that Mr. Mitchell has made that change, and can contribute not only at First Step Living Center, but to others in his community that come behind him.”

CONCLUSIONS OF LAW

1. The Secretary of the Wisconsin Department of Regulation and Licensing has jurisdiction to act in this matter, pursuant to Wis. Stat. § 440.88(6), and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

2. When determining if a conviction is substantially related to a profession, one is to look at the circumstances of the crime, and the circumstances of the practice of the profession, and determine whether the professional setting would foster criminal activity or provide the opportunity for criminal behavior. *County of Milwaukee v. LIRC*, 139 Wis. 2d 805, 407 N.W.2d 908 (1987). Using this test, the convictions described in paragraph 2 above constitute a violation of Wis. Admin. Code § RL 164.01(2)(b) and subject Respondent to discipline pursuant to Wis. Stat. § 440.88(6).

3. It is highly desirable to reintegrate convicted criminals into the work force, not only so they will not remain or become public charges but to turn them away from criminal activity and hopefully to rehabilitate them. *County of Milwaukee v. LIRC*, 139 Wis. 2d 805, 407 N.W.2d 908 (1987). The limitation ordered below is designed to protect the public while recognizing the value of rehabilitating the licensee.

ORDER

IT IS ORDERED:

1. The stipulation of the parties is approved.

2. Zachary Mitchell is GRANTED a certificate as a substance abuse counselor-in-training. That certificate shall be immediately LIMITED as follows:

- (a) Mr. Mitchell shall provide a copy of this Final Decision and Order, and certified copies of his convictions, to any future employers in the substance abuse counseling field prior to beginning such employment.
- (b) Mr. Mitchell shall arrange for his employers in the substance abuse counseling field to provide quarterly reports to the Department, reporting the terms and conditions of his employment and evaluating his work performance. These reports shall be submitted to the Department Monitor in the Department of Regulation and Licensing Division of Enforcement, at P.O. Box 8935, Madison, Wisconsin, 53708-8935.
- (c) Mr. Mitchell shall arrange for his parole officer to provide quarterly reports to the Department, reporting his compliance with the conditions of his parole.
- (d) Mr. Mitchell shall practice only under direct supervision of a certified substance abuse counselor approved by the Secretary or her designee and only in a work setting pre-approved by the Secretary or her designee. Mr. Mitchell shall notify the Department Monitor of any change of employment within fifteen (15) days of the change of employment and shall include an explanation of the reasons for the change.
- (e) Mr. Mitchell shall, upon request of the Secretary or her designee, provide a sample of his breath, blood, urine, or hair for drug testing.

3. This Order shall become effective upon the date of its signing.

Department of Regulation and Licensing

By: Celia Jackson, Secretary

7/10/09

IN THE MATTER OF THE DENIAL OF :
THE APPLICATION FOR CERTIFICATE OF : STIPULATION
:
ZACHARY MITCHELL, : LS# 0906021 RSA
RESPONDENT. :

Division of Enforcement Case # 09 RSA 010

Zachary Mitchell, personally on his own behalf; and Jeanette Lytle, attorney for the Department of Regulation and Licensing, Division of Enforcement, stipulate:

1. This Stipulation is entered into as a result of a denial of Respondent’s application for a substance abuse counselor-in-training certificate. (case # 09 RSA 010). Respondent timely appealed for a hearing on the denial pursuant to Wis. Admin. Code § RL 1.07, and consents to the resolution of his appeal by stipulation.
 2. Respondent understands that by signing this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on his appeal; the right to confront and cross-examine witnesses; 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 the advice of legal counsel prior to signing this stipulation.
 4. Respondent agrees to the adoption of the attached Final Decision and Order by the Secretary of the Department of Regulation and Licensing. 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 Secretary’s order, if adopted in the form as attached.
 6. If the terms of this Stipulation are not acceptable to the Secretary, the parties shall not be bound by the contents of this Stipulation, and the matter shall proceed to hearing.
 7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement may appear before the Secretary, without the presence of the Respondent or his attorney, for purposes of speaking in support of this agreement and answering questions that the Secretary may have in connection with the Secretary’s deliberations on the Stipulation.
 8. Respondent is informed that should the Secretary adopt this Stipulation, the Secretary’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 Secretary adopt this Stipulation and issue the attached Final Decision and Order.
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Zachary Mitchell, Respondent
2522 West Capital Drive # 19
Milwaukee, WI 53206

Date

Jeanette Lytle, Attorney
Division of Enforcement
Wisconsin Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date