

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

THOMAS J. SMITH,  
RESPONDENT.

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:  
:  
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FINAL DECISION AND ORDER

ORDER 0001496

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[Division of Enforcement Case #12 RSA 003]

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

Thomas J. Smith  
366 S. Brown Ave.  
Peshtigo, WI 54157

Division of Enforcement  
Department of Safety and Professional Services  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

Department of Safety and Professional Services  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

The parties in this matter agree to the terms of the attached Stipulation as the final decision of this matter, subject to the approval of the Department of Safety and Professional Services (Department). The Department has reviewed this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Thomas J. Smith was born on August 11, 1950 and is certified as a substance abuse counselor (certificate #10904-132) in the State of Wisconsin. This certificate was first granted on June 28, 2001.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services is 366 South Brown Avenue, Peshtigo, Wisconsin.

3. At all times relevant to this case, Respondent was employed as a substance abuse counselor at Libertas Treatment Center (Libertas), located in Marinette, Wisconsin.

4. On July 7, 2011, Patient A was admitted to intensive outpatient treatment with Libertas for heroin use. Patient A had been an outpatient at Libertas previously. Respondent was assigned as Patient A's counselor.

5. Over the course of treatment, Patient A's sponsor became suspicious of Patient A's consistently clean urinalysis tests when it was apparent Patient A had been using. In January 2012, Patient A's sponsor confronted Patient A regarding the urinalysis test results.

6. Patient A admitted that in the summer of 2011, when she tested positive for drug use in a urinalysis test, Respondent offered to not report her in exchange for oral sex.

7. Patient A admitted that she gave Respondent oral sex several times since the summer of 2011, which resulted in negative urinalysis tests for each testing since that time.

8. Respondent sent Patient A numerous text messages, including but not limited to the following:

- a. December 24, 2011 at 11:17 AM: "Keep thinking big n hard. well hard anyway. hows ur day going?" (sic)
- b. December 24, 2011 at 1:39 PM: "N i'm thinkin wet n wild" (sic)
- c. December 24, 2011 at 2:18 PM: "I'm decoratin cookies. mayb I should decorate u n "eat" u" (sic)
- d. December 24, 2011 at 3:14 PM: "It'll b pleaurable any way it happens. whats ur plans tonite?" (sic)
- e. December 24, 2011 at 3:40 PM: "Come on. its xmas. b nice. a little poke under the tail would calm ya down i bet" (sic)
- f. December 25, 2011 at 7:21 AM: "MERRY CHRISTMAS! love u to." (sic)
- g. December 26, 2011 at 8:02 AM: "Good morning. i know ur working but when u get a chance let me know how ur day is goin n if u want to or if u can get free after work. we can take care of business." (sic)
- h. December 29, 2011 at 5:39 PM: "Oh n u get a special "hug" too" (sic)
- i. December 29, 2011 at 7:42 PM: "Y not come in at noon n we can go to "lunch" n come back for session at 1. looks better that way." (sic)

j. December 29, 2011 at 7:55 PM: "I do want u to come up tho so cindy knows u were here. otherwise if mike or barb talks with cindy she can verify it. we can still leave" (sic)

9. On January 6, 2012, Patient A's sponsor reported this incident to Respondent's employer. Respondent was immediately placed on suspension.

10. On January 7, 2012, Respondent resigned by telephone.

11. This incident was reported to the Marinette County Sheriff's Department and is currently under investigation.

12. Respondent neither admits nor denies the allegations, but agrees that the facts as set forth above are legally sufficient to support the Conclusions of Law and Order below. In the interest of resolving this matter without further expense or hearing, and for the purposes of the resolution of the case before the Department of Safety and Professional Services only, Respondent agrees to entry of this Final Decision and Order.

#### CONCLUSIONS OF LAW

1. The Wisconsin Department of Safety and Professional Services has jurisdiction over this matter pursuant to Wis. Stat. § 440.88 and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent's conduct above constitutes unprofessional conduct as defined by Wis. Admin. Code § SPS 164.01(2)(m) (previously Wis. Admin. Code § RL 164.01(2)(m)) and subjects Respondent to discipline pursuant to Wis. Stats. § 440.88(6).

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The Department accepts the resignation and surrender of Respondent's certificate (#10904-132) and all rights and privileges attendant to the certificate.

IT IS FURTHER ORDERED that:

2. Within ninety (90) days of the date of this Order, Respondent shall pay costs of this proceeding in the amount of FOUR HUNDRED DOLLARS (\$400.00) pursuant to Wis. Stat. § 440.22(2). Payment shall be made payable to the Wisconsin Department of Safety and Professional Services and mailed or delivered to:

Department Monitor  
Department of Safety and Professional Services  
Division of Enforcement  
1400 East Washington Ave.  
P.O. Box 8935

Madison, WI 53708-8935  
Telephone (608) 267-3817  
Fax (608) 266-2264

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

**WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

By   
Michael J. Bernitt, General Counsel  
On behalf of the Department

4/17/12  
Date