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Before The
State Of Wisconsin
**MASSAGE THERAPY AND BODYWORK THERAPY
AFFILIATED CREDENTIALING BOARD**

In the Matter of the Disciplinary Proceedings
Against **JOAO L. FRASIER**, Respondent

FINAL DECISION AND ORDER
Order **ORDER 0002000**

Division of Enforcement Case Nos. 11 MTB 003, 11 MTB 010

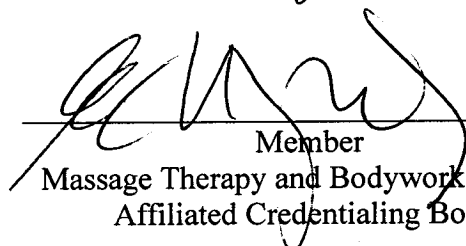
The State of Wisconsin, Massage Therapy and Bodywork Therapy Affiliated Credentialing Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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, Massage Therapy and Bodywork Therapy Affiliated Credentialing 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 at Madison, Wisconsin on the 21 day of August, 2012.



Member
Massage Therapy and Bodywork Therapy
Affiliated Credentialing Board



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Disciplinary Proceedings
Against **JOAO L. FRASIER**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-11-0084
ORDER 0002000

Division of Enforcement Case Nos. 11 MTB 003, 11 MTB 010

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Joao L. Frasier
4818 Gordon Avenue
Monona, WI 53716-2623

Massage Therapy and Bodywork Therapy Affiliated Credentialing Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Safety and Professional Services, Division of Enforcement, by

Attorney Susan D. Gu
Department of Safety and Professional Services
Division of Enforcement
P. O. Box 8935
Madison, WI 53708-8935

PROCEDURAL SUMMARY

These proceedings were initiated when the Department of Safety and Professional Services, Division of Enforcement (the Division), filed a formal Complaint against Respondent Joao Frasier, alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 460.14 and Wis. Admin. Code §§ SPS 94.01(10) and 94.01(11).

FINDINGS OF FACT

1. Joao L. Frasier ("Respondent") was born on December 15, 1970 and is licensed to practice as a massage therapist in the State of Wisconsin (license #10404-146). This license was first granted on December 22, 2010.

2. Respondent's most recent address on file with the Department of Safety and Professional Services at the time was 320 Monona Drive, #104, Monona, Wisconsin 53716.

3. At all times relevant to this proceeding, Respondent owned, operated, and worked at Relaxa Massage, located in Monona, Wisconsin.

4. On April 15, 2011, Client J.L., a thirty-year-old female, presented to Respondent for a full body massage. During the appointment, the following occurred:

- a. Respondent stated that Client J.L. must remove her bra;
- b. While working on Client J.L.'s buttocks area, Respondent completely removed the sheet covering the client, exposing the area;
- c. While working on Client J.L.'s buttocks area, Respondent pulled down the back of the client's underwear;
- d. While working on Client J.L.'s buttocks area, Respondent pulled apart the client's buttocks cheeks for a moment; and
- e. While Respondent massaged Client J.L.'s upper thigh area, just short of the pubic region, Respondent stated that the pubic region was very tender and needed to be worked on. Respondent then stated that "if you rub a woman client's vagina area, you gain her trust."

5. On July 27, 2011, Client B.E., a fifty-seven-year-old female, presented to Respondent for a full body massage. During the appointment, the following occurred:

- f. Respondent moved the sheet covering Client B.E.'s chest down to just above the nipples;
- g. Respondent massaged Client B.E.'s chest despite her explicit desire not to be worked on that area, as indicated in her written forms;
- h. Respondent rubbed lightly over Client B.E.'s nipples twice;
- i. While massaging Client B.E.'s thighs, Respondent moved his fingers several times over the outside of Client B.E.'s vulva, then several times on the inside; and
- j. Respondent rubbed Client B.E.'s inner vulva vigorously, and inserted his finger into Client B.E.'s vagina.

6. The Division filed a Complaint with the Division of Hearings and Appeals (DHA) on August 31, 2011, alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 460.14 and Wis. Admin. Code §§ SPS 94.01(10) and 94.01(11). On that same date, the Division sent a copy of the Complaint and a Notice of Hearing via both regular and certified mail to Respondent at his most recent address on file with the Division at that time, 6320 Monona Dr. #104 Monona, WI 53716.

7. The Notice of Hearing stated that Respondent was required to file a written Answer to the Complaint within 20 days, failing which “[he would] be found to be in default, and a default judgment [could] be entered against [him] on the basis of the Complaint and other evidence and the Board [could] take disciplinary action against [him] and impose the costs of the investigation, prosecution and decision of this matter upon [him] without further notice or hearing.” On or about September 13, 2011, Respondent signed the certified mail receipt acknowledging delivery.

8. To date, no Answer has been filed.

9. On September 26, 2011, the Administrative Law Judge (ALJ) of DHA issued a Notice of Telephone Prehearing Conference that set a telephone conference with Respondent and Attorney Susan Gu of the Division for October 12, 2011. This Notice instructed Respondent to contact the ALJ to provide the telephone number for which he could be reached for the October 12, 2011 telephone conference, and was sent to the address on file for Respondent, as provided above.

10. Respondent did not contact the ALJ with a telephone number at which he could be reached for the October 12, 2011, telephone conference, and the telephone conference that was conducted on that date was without Respondent’s participation.

11. At the October 12, 2011 conference, Attorney Gu moved for default judgment pursuant to Wis. Admin. Code § SPS 2.14. The ALJ summarily accepted Attorney Gu’s default motion and, on October 12, 2011, issued a Notice of Default instructing Respondent that he was in default and that findings would be made and an Order entered on the basis of the Complaint and other evidence. The Notice of Default further ordered Attorney Gu to provide the ALJ with the Division’s written recommendations for discipline and the assessment of costs in this matter. The Notice was mailed to Respondent at the address provided above.¹ Attorney Gu provided the ALJ with the Division’s written recommendations as to discipline and costs on October 17, 2011.²

12. Respondent has failed to respond to either the Notice of Default issued against him or the written recommendations provided by the Division.

CONCLUSIONS OF LAW

1. The Wisconsin Massage Therapy and Bodywork Therapy Affiliated Credentialing Board (Board) has jurisdiction over this matter pursuant to Wis. Stat. § 460.14.

¹ On November 10, 2011, DHA received Form 3547 from the U.S. Postal Service indicating that Respondent’s address had changed to that which is set forth in the caption at the beginning of this proposed decision.

² Although the Division’s October 17, 2011 submission does not indicate that Respondent was copied on it, I have no reason to believe the Division failed to provide him with a copy. See Wis. Stat. § 227.50.

2. Wisconsin Stat. § 440.03(1) provides that the Department of Safety and Professional Services “may promulgate rules defining uniform procedures to be used by the department... and all examining boards and affiliated credentialing boards attached to the department or an examining board, for... conducting [disciplinary] hearings.” These rules are codified in Wis. Admin. Code ch. SPS.

3. Pursuant to Wis. Stat. § 460.14(2)(g), the Board has the authority to “deny, limit, suspend, or revoke a license” of a massage therapist if the Board finds that the massage therapist has “[e]ngaged in unprofessional conduct” in violation of the standards established in applicable administrative rules.

4. Respondent was duly served with the Complaint and Notice of Hearing, Notice of Telephone Prehearing Conference, and Notice of Default pursuant to Wis. Admin. Code § SPS 2.08.

5. Respondent has defaulted in this proceeding pursuant to Wis. Admin. Code § SPS 2.14 by failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § SPS 2.09.

6. Pursuant to Wis. Admin. Code § SPS 2.09, Respondent has admitted to the allegations of the Complaint by not filing an Answer.

7. Respondent also defaulted in this proceeding for his failure to appear at the scheduled prehearing conference after due notice, pursuant to Wis. Admin. Code § HA 1.07(3)(c).

8. Respondent, by engaging in the conduct set forth in Findings of Fact 4 and 5, has failed to provide draping and treatment that ensure safety and privacy to a client, which constitutes unprofessional conduct as defined by Wis. Admin. Code § SPS 94.01(10).

9. Respondent, by engaging in the conduct set forth in Findings of Fact 4 and 5, has engaged in inappropriate sexual conduct, exposure or gratification, or other sexual behavior with or in the presence of a client, which constitutes unprofessional conduct as defined by Wis. Admin. Code § SPS 94.01(11).

10. Based on the Findings of Fact and Conclusions of Law above, Respondent is subject to discipline pursuant to Wis. Stat. § 460.14.

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against him, Respondent has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § SPS 2.09. Accordingly, it is undisputed that on April 15, 2011, during an appointment with Client

J.L., Respondent exposed J.L.'s buttocks, pulled down her underwear, and made inappropriate statements. In addition, on July 27, 2011, during an appointment with Client B.E., Respondent massaged her chest area against her wishes, touched her vulva, and inserted his fingers into her vagina. This conduct constitutes unprofessional conduct, in violation of Wis. Stat. § 460.14(2)(g), and Wis. Admin. Code § SPS 94.01(10) and (11).

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976).

The Division of Enforcement requests that Respondent's license be revoked. In the absence of any argument from Respondent, and based on the seriousness of Respondent's repeated actions, the undersigned ALJ believes the discipline recommended by the Division is appropriate. Revocation assures that the public will not be exposed to the unacceptable risk of sexual assault by Respondent and deters others from such conduct.

I also note that Wis. Stat. § 460.14(3) provides that the Board may reinstate the revoked license as the Board may deem appropriate. In the event Respondent becomes able to provide massage therapy services without endangering his clients, he may reapply for licensure. This discipline will be on record, so the Board will have the option of offering him a limited license with appropriate terms and conditions.

Costs

The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings.

In *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), the Chiropractic Examining Board stated:

The ALJ's recommendation and the ... Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder..., 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 respondents cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of [Safety and Professional Services] is a "program revenue" agency, whose operating costs are funded by the

revenue received from licenses, 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;

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 [Safety and Professional Services] is a "program revenue" agency, whose operating costs are funded by the revenue received for licensees, fairness here dictates imposing the costs of disciplining the respondent upon the respondent and not fellow members of the chiropractic profession who have not engaged in such conduct.

For many of the same reasons delineated in the *Buenzli-Fritz* decision, it is reasonable to assess the full costs of the proceeding against Respondent because of the nature and seriousness of his misconduct, the level of discipline sought by the Department of Safety and Professional Services (DSPS), and the fact that DSPS is a "program revenue" agency, where operating costs are funded by the revenue received from licensees. It would be unfair to impose the costs of disciplining Respondent on the licensees who have not engaged in misconduct

If the Board assesses costs against Respondent, the amount of costs will be determined pursuant Wis. Admin. Code § SPS 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of the Respondent Joao Frasier to practice as a massage therapist in the State of Wisconsin be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

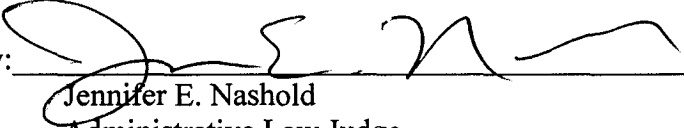
**Department Monitor
Department of Safety and Professional Services
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Joao Frasier.

Dated at Madison, Wisconsin on January 20, 2012.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____


Jennifer E. Nashold
Administrative Law Judge

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