

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

DAVID J. MACINTYRE,  
RESPONDENT.

:  
:  
: FINAL DECISION AND ORDER  
: DHA case number SPS 15-0066  
: **0004446**

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Division of Legal Services and Compliance Case No. 14 CPC 039

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

David J. MacIntyre  
6380 Pigeon Rd.  
Lake Tomahawk, WI 54539

Professional Counselor Section of the Wisconsin Marriage and Family Therapy,  
Professional Counseling, and Social Work Examining Board  
P.O. Box 8366  
Madison, WI 53708-8366

Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 7190  
Madison, WI 53707-7190

PROCEDURAL HISTORY

The Division of Legal Services and Compliance commenced this proceeding on July 21, 2015. Respondent, by his attorney Sarah L. Ruffi, filed an Answer on August 25, 2015, and Administrative Law Judge Jennifer E. Nashold presided over prehearing and scheduling conferences

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Professional Counselor Section of the Wisconsin Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board (Section). The Section has reviewed this Stipulation and considers it acceptable.

Accordingly, the Section in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

### FINDINGS OF FACT

1. Respondent David J. MacIntyre (dob February 25, 1970) is licensed to practice professional counseling in the state of Wisconsin, having license number 4018-125, first issued on February 14, 2008 and current through February 28, 2017. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 6380 Pigeon Road, Lake Tomahawk, Wisconsin 54539.
2. At all times relevant to this proceeding, Respondent was an independent contractor as a professional counselor at Compass Counseling, located in Wausau, Wisconsin.
3. Respondent enrolled and was accepted into the Professional Assistance Program (PAP).
4. On August 25, 2014, Respondent called in sick to work. Respondent's appointments were cancelled by staff for August 25-28, 2014.
5. Respondent's employer was later informed by Respondent's partner that Respondent was admitted to the hospital from August 31 through September 2, 2014, after drinking alcohol all weekend.
6. Respondent's employment was suspended pending medical clearance to return to work.
7. On September 5, 2014, Respondent received clearance to return to work.
8. On September 15, 2014, Respondent was sent home in the afternoon by his supervisor for being incoherent, disheveled, and rambling.
9. On September 18, 2014, Respondent left work for four (4) hours in the middle of the day. Upon his return, Respondent had red, watery, droopy eyes; was hyper-verbal and staff later suspected Respondent of drinking alcohol.
10. On September 22, 2014, Respondent called in sick. Respondent's employer was informed by Respondent's partner that Respondent had been admitted to the hospital for drinking. As a result, Respondent's employment was terminated.
11. Respondent was dismissed from the Professional Assistance Procedure program.
12. Respondent entered AODA treatment in October 2014, and has been compliant with treatment recommendations.
13. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

### CONCLUSIONS OF LAW

1. The Professional Counselor Section of the Wisconsin Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 457.26(2), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent David J. MacIntyre, engaged in unprofessional conduct as defined by Wis. Admin. Code § MPSW 20.02(9), by practicing or attempting to practice while the credential holder was impaired due to the utilization of alcohol or other drugs, or as a result of an illness which impaired the credential holder's ability to appropriately carry out the functions delineated under the credential in a manner consistent with the safety of a client, patient, or the public.

3. As a result of the above violation, David J. MacIntyre is subject to discipline pursuant to Wis. Stat. § 457.26(2)(e), (f) and (h).

### ORDER

1. The attached Stipulation is accepted.

2. The professional counselor license issued to Respondent David J. MacIntyre, (license number 4018-125) is SUSPENDED as follows:

### SUSPENSION

- A.1. The license of David J. MacIntyre, to practice professional counseling in the state of Wisconsin is SUSPENDED for an indefinite period as provided in sections B, C, and D of this Order.
- A.2. Respondent shall mail or physically deliver all indicia of licensure to practice professional counseling in Wisconsin to the Department Monitor within fourteen (14) days of the effective date of this order. Limited credentials can be printed from the Department of Safety and Professional Services website at <http://dsps.wi.gov/index.htm>.
- A.3. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active professional counseling for every year the suspension is stayed, the Section may grant a petition by the Respondent under paragraph D.6. for return of full Wisconsin licensure. The Section may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time.

### STAY OF SUSPENSION

- B.1. The suspension is hereby stayed based upon Respondent having provided proof, which was determined by the Section or its designee to be sufficient, that

Respondent is in compliance with the provisions of Sections C and D of this Order.

- B.2. The Section or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. A substantial violation includes, but is not limited to, a positive drug or alcohol screen. A repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Section or its designee may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
  - (a) Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services pursuant to Wis. Stat. § 440.11; or
  - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Section or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Section or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within sixty (60) days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

#### CONDITIONS AND LIMITATIONS

##### Treatment Required

- C.1. Respondent shall enter into, and shall continue, drug and alcohol treatment with a treater acceptable to the Section or its designee (Treater). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as required by this Order, Respondent

shall immediately seek approval of a successor Treater by the Section or its designee.

- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Section or its designee, after receiving a petition for modification as required by D.4., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in drug and alcohol treatment. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

#### Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Section, its designee, and any employee of the Department of Safety and Professional Services, Division of Legal Services and Compliance to: (a) obtain all specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation with Treater and treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

#### AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported quarterly to Treater and the Department Monitor.

#### Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Section or its designee. Copies of these releases shall immediately be filed with the Department Monitor.

- C.10. Respondent shall abstain from all use of over-the-counter medications or other substances (including but not limited to natural substances such as poppy seeds) which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation. It is Respondent's responsibility to educate himself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- C.11. Respondent shall report to Treater and the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within twenty-four (24) hours of ingestion or administration of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.
- C.12. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that they may take from time to time. Over-the-counter medications and drugs that mask the consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation, shall not be taken unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.11.

#### Drug and Alcohol Screens

- C.13. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department (Approved Program).
- C.14. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
  - (b.) Production of a urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.15. The Approved Program shall require the testing of specimens at a frequency of not less than forty-nine (49) times per year, for the first year of this Order. After the first year, Respondent may petition the Section on an annual basis for a

modification of the frequency of tests. The Section may adjust the frequency of testing on its own initiative at any time.

- C.16. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Section or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.17. In addition to any requirement of the Approved Program, the Section or its designee may require Respondent to do any or all of the following: (a) submit additional specimens; (b) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.
- C.18. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.
- C.19. The Approved Program shall submit information and reports to the Department Monitor as directed.

#### Practice Limitations

- C.20. Respondent shall not work as a professional counselor in a setting in which Respondent has access to controlled substances.
- C.21. Respondent shall practice only under the direct supervision of a licensed professional counselor or other licensed health care professional approved by the Section or its designee.
- C.22. Respondent shall practice only in a work setting pre-approved by the Section or its designee.
- C.23. Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a professional counselor, currently or in the future.
- C.24. It is Respondent's responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active professional counseling practice worked during that quarter. If a report indicates poor performance, the Section may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion.
- C.25. Respondent shall report to the Section any change of employment status, residence, address or telephone number within five (5) days of the date of a change.



MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor  
Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 7190, Madison, WI 53707-7190  
Telephone (608) 267-3817; Fax (608) 266-2264  
[DSPSMonitoring@wisconsin.gov](mailto:DSPSMonitoring@wisconsin.gov)

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.
- D.3. Every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by the Section

- D.4. If the Section or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Section or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.5. Respondent may petition the Section on an annual basis for modification of the terms of this Order, however no such petition for modification shall occur earlier than one (1) year from the date of the initial stay of the suspension. Any petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.
- D.6. Respondent may petition the Section for termination of this Order anytime after five (5) years from the date of the initial stay of the suspension. However, no

petition for termination shall be considered without a showing of continuous, successful compliance with the terms of the Order, for at least five (5) years. Petitions for termination of this Order shall not unreasonably be denied.

Costs of Compliance

- D.7. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Costs of Proceeding

- D.8. Respondent shall pay costs of \$1020.00 to the Department of Safety and Professional Services, within ninety (90) days of this Order. Payment should be directed to the attention of the Department Monitor at the address in paragraph D.1., above. In the event Respondent fails to timely submit any payment of costs, the Respondent's license (#4018-125) may, in the discretion of the Section or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

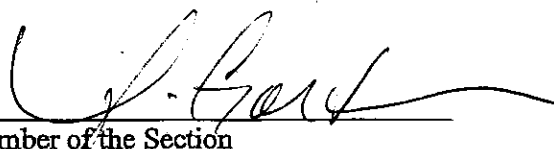
- D.9. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 457.26(2).

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

Dated at Madison, Wisconsin this 21 day of December 2015

PROFESSIONAL COUNSELOR SECTION OF THE WISCONSIN MARRIAGE AND  
FAMILY THERAPY, PROFESSIONAL COUNSELING, AND SOCIAL WORK  
EXAMINING BOARD

By:

  
A Member of the Section

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

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

DAVID J. MACINTYRE,  
RESPONDENT.

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STIPULATION

0004446

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Division of Legal Services and Compliance Case No. 14 CPC 039

Respondent David J. MacIntyre and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, 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 Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- 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 Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondent is represented by Sarah L. Ruffi.


4. Respondent agrees to the adoption of the attached Final Decision and Order by the Professional Counselor Section of the Wisconsin Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (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 then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the 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.

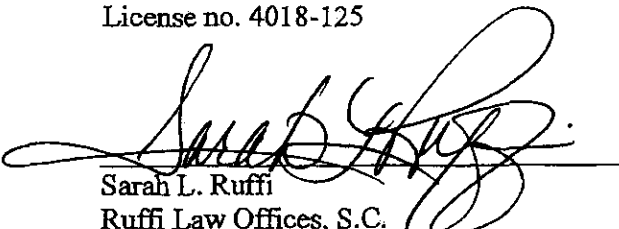
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Section ever assigned as an advisor in this investigation may appear before the Section in open or closed session, without the presence of Respondent or Respondent's attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Section may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Section should accept this Stipulation and issue the attached Final Decision and Order.

7. 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.

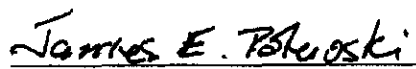
8. The Division of Legal Services and Compliance joins Respondent in recommending the Section adopt this Stipulation and issue the attached Final Decision and Order.

  
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David J. MacIntyre, Respondent  
6380 Pigeon Rd.  
Lake Tomahawk, WI 54539  
License no. 4018-125

October 19, 2015  
Date

  
\_\_\_\_\_  
Sarah L. Ruffi  
Ruffi Law Offices, S.C.  
627 Jackson Street  
Wausau, WI 54403

10/19/15  
Date

  
\_\_\_\_\_  
James E. Polewski, Attorney  
Department of Safety and Professional Services  
P.O. Box 7190  
Madison, WI 53707-7190  
Tel. (608) 266-0358  
Fax: (608) 266-2264

October 12, 2015  
Date