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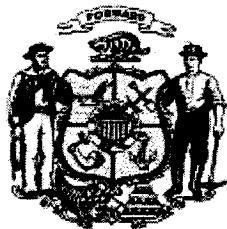
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**Before the
State of Wisconsin
Massage Therapy and Bodywork Therapy Affiliated Credentialing Board**

In the Matter of Disciplinary Proceedings Against
Ismail Alshikhly, Respondent

FINAL DECISION AND ORDER

Order No. 0004841

Division of Legal Services and Compliance Case No. 15 MAB 051

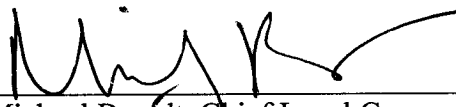
On July 18, 2016, the State of Wisconsin, Massage Therapy and Bodywork Therapy Affiliated Credentialing Board, delegated authority to Department of Safety and Professional Services Chief Legal Counsel Michael Berndt to review and decide this matter. Chief Legal Counsel Berndt, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes 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 to petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 26th day of July, 2016.



Michael Berndt, Chief Legal Counsel
Department of Safety and Professional
Services for the Massage Therapy and
Bodywork Therapy Affiliated Credentialing
Board



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

In the Matter of Disciplinary Proceedings Against
Ismail Alshikhly, Respondent

DHA Case No. SPS-16-0016
DLSC Case No. 15 MAB 051

PROPOSED DECISION AND ORDER

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

Ismail Alshikhly
5609 Medical Circle, Suite L20
Madison, WI 53719-1291

Wisconsin Massage Therapy and Bodywork Therapy Affiliated Credentialing Board
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

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

PROCEDURAL HISTORY

The Notice of Hearing and the Complaint in this matter were served on Respondent Ismail S. Alshikhly (Respondent), by the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), on February 4, 2016, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. An Answer to a Complaint must be filed within 20 days from the date of service of the Complaint. Wis. Admin. Code § SPS 2.09(4). No Answer has been filed.

Following expiration of the 20-day time period to file an Answer, the undersigned administrative law judge (ALJ) scheduled a prehearing conference for Monday, March 7, 2016 at 11:00 a.m. Notice of this prehearing conference was sent to both parties, with instructions that

Respondent provide to the ALJ a telephone number at which he could be reached for the conference no later than March 2, 2016. Respondent failed to provide a telephone number and failed to appear at the telephone prehearing conference held on March 7, 2016. At the prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to appear at the prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default.

On March 7, 2016, the ALJ issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order no later than March 11, 2016. The Division timely filed its required submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-9 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Ismail S. Alshikhly is licensed in the State of Wisconsin to practice massage therapy or bodywork therapy, having license number 3999-146, first issued on October 12, 2010, and current through February 28, 2017.

2. Respondent's most recent address on file with the Department is 5609 Medical Circle, Ste. L20, Madison, Wisconsin 53719-1291.

3. On June 26, 2015, the City of Madison Police Department (MPD) received a complaint alleging that Respondent sexually assaulted a female client, Client A, at the address referenced in paragraph 2.

4. In the course of providing massage therapy to Client A on June 26, 2015, Respondent rubbed and licked Client A's breasts and genitals, and placed his penis in her mouth.

5. On June 26, 2015, Client A underwent a sexual assault exam performed by a healthcare professional, which included swabbing Client A's breasts for DNA comparison.

6. On July 1, 2015, Respondent was interviewed by MPD and denied any sexual contact between him and Client A.

7. On July 1, 2015, MPD collected Respondent's DNA from a buccal swab of the inside of Respondent's mouth for DNA comparison.

8. The DNA samples obtained from Client A and Respondent were submitted to the Wisconsin State Crime Lab (WSCL) for testing.

9. WSCL test results indicate that Respondent's DNA (saliva) was present on Client A's breast.

Facts Related to Default

10. The Notice of Hearing and Complaint were served on Respondent on February 4, 2016, by certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing instructed Respondent: "If you do not provide a proper Answer within 20 days, you will be found to be in default, and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

11. Respondent was served at his address of record with the Department, as reflected above. Both certified and regular mailings were returned as undeliverable, with no forwarding address provided. The Department's attempts to contact Respondent at his email address and phone number of record resulted in error and disconnect messages, respectively. Wisconsin Stat. § 440.11 requires Respondent to provide the Department with current contact information.

12. Following expiration of the 20-day time period in which to file an Answer, the ALJ scheduled a prehearing conference for Monday, March 7, 2016. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which he could be reached for the conference no later than March 2, 2016. The Notice further informed Respondent: "A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent."

13. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

14. The Notice for the prehearing conference was returned to the Division of Hearings and Appeals on February 29, 2016, with no forwarding address.

15. Respondent failed to provide a telephone number. At the prehearing conference, the Division indicated that it likewise did not have a telephone number for Respondent.

16. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). Based on Respondent's failure to file an Answer to the Complaint and his failure to appear at the March 7, 2016 prehearing conference, the ALJ granted the motion for default.

17. On March 7, 2016, the ALJ issued a Notice of Default and Order, ordering that the Division submit a recommended proposed decision and order by March 11, 2016.

18. The Division timely filed its recommended proposed decision and order.

19. Respondent did not file a response to either the Division's submission or to the Notice of Default and Order.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the March 7, 2016 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the prehearing conference held on March 7, 2016. *See* Wis. Admin. Code §§ SPS § 2.09(4) and 2.14; Wis. Admin. Code § HA 1.07(3). Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

Violations of Wisconsin Statute and Administrative Code

If the Wisconsin Massage Therapy and Bodywork Therapy Affiliated Credentialing Board (Board) determines that a credential holder has engaged in unprofessional conduct, it may reprimand the credential holder or deny, limit, suspend, or revoke the credential holder's license. Wis. Stat. § 460.14(2)(g). Unprofessional conduct under Wis. Stat. § 460.14(2)(g) includes "[e]ngaging in inappropriate sexual conduct, exposure or gratification, or other sexual behavior with or in the presence of a client." Wis. Admin. Code § MTBT 5.01(11) (Aug. 2012).

The undisputed allegations in the Complaint are that in the course of providing massage therapy to Client A on June 26, 2015, Respondent rubbed and licked Client A's breasts and genitals, and placed his penis in her mouth. Respondent's conduct constituted unprofessional conduct pursuant to Wis. Admin. Code § MTBT 5.01(11) (Aug. 2012) and subjects him to discipline pursuant to Wis. Stat. § 460.14(2)(g).

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, 237 N.W.2d 689 (1976).

The Division recommends that Respondent's license be revoked, as set forth in the Proposed Order below. Based on the facts of this case and the factors articulated in *Aldrich*, the Division's proposed discipline is warranted.

First and foremost is the protection of the public. Respondent used his position as a massage therapist to engage in inappropriate sexual contact with a client. When the police interviewed Respondent, he denied any sexual contact whatsoever, but his denial was proven false by DNA analysis showing Respondent's DNA (saliva) on the client's breasts. Instead of defending himself or taking responsibility for his actions, Respondent cut off all avenues of contact, and failed to participate in this matter.

Moreover, rehabilitation appears to be unlikely, given Respondent's egregious conduct and his failure to participate in any way in these proceedings. Respondent has evidently discontinued his massage therapy business, terminating his address, email and phone number, and providing no updated contact information to the Department, as required by Wis. Stat. § 440.11. This shows Respondent refuses to be held accountable for his actions, which is an important consideration in determining the prospects for rehabilitation. Finally, with respect to deterrence, other licensees should be on notice that inappropriate sexual contact with clients has extremely significant consequences.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. Factors which may be considered in assessing costs are: (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 prosecutor; (4) the respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department 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; and (7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz, D.C.*, LS0802183CHI (Aug. 14, 2008).

The Division requests that Respondent be ordered to pay the full costs of this investigation and of these proceedings. Based on the factors delineated in *Buenzli-Fritz* and the facts of this case, the Division's request is appropriate.

The Division has proven the conduct and violation alleged. Respondent's misconduct is very serious and severely undermines public safety. Respondent rubbed and licked a female client's breasts and genitals, and placed his penis in her mouth. The client reported Respondent's unwanted contact to the police. When the police interviewed Respondent, he denied any sexual contact whatsoever, but, as stated, his denial was proven false. In addition, Respondent has refused to participate in any way in these proceedings.

Finally, given the fact that the Department is a "program revenue" agency whose operating costs are funded by the revenue received for licensees, fairness dictates imposing the costs of disciplining Respondent upon Respondent and not fellow members of the profession who have not engaged in such misconduct.

As a result, full costs are assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS HEREBY ORDERED:

(1) The license of Ismail S. Alshikhly (license number 3999-146) to practice massage therapy or bodywork therapy in the State of Wisconsin IS REVOKED.

(2) Respondent shall mail or physically deliver all indicia of Wisconsin licensure to practice massage therapy or bodywork therapy to the Department Monitor within 14 days of the effective date of this order.

(3) Should Respondent ever apply for a credential with the Department in the future, he shall, as prerequisite to such application, pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18.

(4) The terms of this Order are effective the date the Final Decision and Order is signed by the Board.

Dated at Madison, Wisconsin on March 16, 2016.

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

By: _____

Jennifer E. Nashold

Administrative Law Judge