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**Before the
State of Wisconsin
Department of Safety and Professional Services**

In the Matter of a Petition for an Administrative
Injunction against Regan D. Wyatt, Respondent.

FINAL DECISION AND ORDER
ORDER 0007353
Order No. _____

Division of Legal Services and Compliance Case No. 20 UNL 030

The State of Wisconsin, Department of Safety and Professional Services, 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, Department of Safety and Professional Services.

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 28th day of April, 2021.

Al. Rohmeyer

Member Chief Legal Counsel
Department of Safety and Professional Services



**Before the
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of a Petition for an Administrative
Injunction against Regan D. Wyatt, Respondent

DHA Case No. SPS-21-0002
DLSC Case No. 20 UNL 30

RECOMMENDED PROPOSED DECISION AND ORDER

The parties to this proceeding for purposes of Wis. Stat. §§ 227.44, 227.47(1) and 227.53 are:

Regan D. Wyatt
705 Algoma Blvd., Suite C
Oshkosh, WI 54901
reganwyatt42@gmail.com

Department of Safety and Professional Services, by
Attorney Gretchen Mrozinski
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190
Gretchen2.Mrozinski@wisconsin.gov

Regan D. Wyatt
200 East US-34 #8014
Grand Island, NE 68801

Regan D. Wyatt
216 N. Eddy St., Apt 1
Grand Island, NE 68801

PROCEDURAL HISTORY

The proceedings were initiated on January 8, 2021, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a petition for administrative injunction against Regan D. Wyatt (Respondent), alleging that Respondent engaged in the practice of selling and fitting hearing aids and engaged in the practice of audiology without a license, in violation of Wis. Stat. §§ 459.02(1) and 459.24(1)(b).

The Division served Respondent on January 8, 2021, by sending a copy of the petition for administrative injunction and notice of hearing by both certified and regular mail. Respondent did not file an answer to the petition.

At the expiration of the 20-day time period to file an answer, the undersigned administrative law judge (ALJ) scheduled a telephone pre-hearing conference for February 8, 2021, at 10:30 a.m. At the request of the Division, the prehearing conference was rescheduled to February 11, 2021, at 10:00 a.m. Notice of the rescheduled telephone prehearing conference was

sent to both parties, with instructions that Respondent contact the ALJ with a telephone number at which Respondent could be reached for the conference no later than February 10, 2021. Respondent did not contact the ALJ.

At the prehearing conference held on February 11, 2021, the ALJ attempted to reach Respondent at two telephone numbers that the Division had on file for the Respondent. Respondent did not answer the telephone at either number, and the ALJ received automated telephone system messages, which stated that the numbers (308.930.7045 and 308.530.7045) "cannot be reached." The ALJ was unable to leave a voice mail message for the Respondent. To date, Respondent has not contacted the ALJ or filed an answer.

Based on Respondent's failure to file an answer to the petition and failure to appear at the prehearing conference in this matter, the Division moved for default pursuant to Wis. Admin. Code § SPS 3.13. On February 11, 2021, the ALJ granted the Division's motion, finding the Respondent in default, and issued a Notice of Default and Order against Respondent that ordered the Division file a recommended proposed decision and order no later than March 5, 2021. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-13 are from the Division's petition for administrative injunction.

1. Regan D. Wyatt's (Respondent), (DOB 7/2/1967), last known Wisconsin address is 1750 Algoma Blvd., Suite C, Oshkosh, Wisconsin 54901.
2. Respondent is not and has never been licensed in the state of Wisconsin to practice as a hearing instrument specialist or an audiologist.
3. On March 6, 2020, the Department received a complaint that Respondent was practicing as a hearing instrument specialist and holding himself out as an audiologist, while working at Elite Hearing Centers in Oshkosh, Wisconsin (Elite Hearing), without possessing the necessary licensure.
4. Respondent provided a business card to A.S. in February or early March 2020. The business card advised that Respondent worked for Elite Hearing and that he was a "Hearing Instrument Specialist" in Wisconsin.
5. A.S. asked Respondent if he was an audiologist and Respondent said "yes."
6. On April 22, 2020, Respondent provided a written response to the Division, in which Respondent stated that on March 1, 2020, he was at a bar and was handing out business cards to promote Elite Hearing, where he is shadowing the head hearing instrument specialist, but that he did not identify himself as a "hearing doctor" or an audiologist.

7. Respondent also provided a written statement from an individual who confirmed that Respondent identified himself as a hearing instrument specialist.
8. Respondent was employed as a hearing aid specialist at Elite Hearing from December 2, 2019 through July of 2020. Respondent's job duties per his job description and per his actual job performance included: audiometric testing, recommendation of hearing aids, fitting of hearing aids, sale of hearing aids, dispensing of hearing aids, and service of hearing aids.
9. During his employment at Elite Hearing, Respondent conducted approximately 44 audiograms, a hearing test to assess whether a patient has hearing loss.
10. Elite Hearing regional management informed the Division that they were unaware that Respondent was not licensed in Wisconsin to perform the duties identified above.
11. Following the April 22, 2020 communication from Respondent, Respondent failed to respond to repeated requests for additional information from the Division.
12. Respondent is licensed as a hearing instrument specialist in Nebraska beginning in 1994. The Division mailed a letter to Respondent's mailing address provided by Nebraska's Division of Public Health. The letter was returned to sender by the post office, with a new possible address for Respondent.
13. On October 20, 2020, the Division mailed a letter to Regan Wyatt, 200 East US-34 #8014, Grand Island, NE 68801, the address provided by the post office in paragraph 12. This letter was returned to sender by the post office.

Facts Related to Default

1. The petition for administrative injunction and notice of hearing in this matter were served on Respondent on January 8, 2021, by both certified and regular mail.
2. Respondent failed to file an Answer.
3. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for February 8, 2021, at 10:30 a.m. At the request of the Division, the prehearing conference was rescheduled to February 11, 2021, at 10:00 a.m. Notice of the rescheduled telephone prehearing conference was sent to both parties, with instructions that Respondent contact the ALJ with a telephone number at which Respondent could be reached for the conference no later than February 10, 2021. Respondent did not contact the ALJ.
4. At the prehearing conference held on February 11, 2021, the ALJ attempted to reach Respondent at two telephone numbers that the Division had on file for the Respondent. Respondent did not answer the telephone at either number, and the ALJ received automated telephone system messages, which stated that the numbers (308.930.7045 and

308.530.7045) “cannot be reached.” The ALJ was unable to leave a voice mail message for the Respondent.

5. The Division moved for default based on the Respondent’s failure to file an Answer and failure to appear at the prehearing conference.
6. On February 11, 2021, the ALJ granted the Division’s motion for default. The ALJ ordered the Division to file and serve, no later than March 5, 2021, a recommended proposed decision and order in this matter.
7. The Division timely filed its recommended proposed decision and order.

DISCUSSION AND CONCLUSIONS OF LAW

Jurisdictional Authority

Pursuant to Wis. Stat. § 440.21 and Wis. Admin. Code ch. SPS 3, the Department of Safety and Professional Services (Department) is the legal authority responsible for enforcing laws requiring credentials issued under Wis. Stat. chs. 440 to 480. The Department has jurisdiction over the subject matter of a petition alleging that a person engaged in a practice without a credential required under Wis. Stat. chs. 440 to 480.

Pursuant to Wis. Admin. Code § SPS 3.09(2), the undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1).

Default

On January 8, 2021, a copy of the petition for administrative injunction and notice of hearing were properly served on Respondent by both certified and regular mail, consistent with Wis. Admin. Code § SPS 3.07. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 3.08(1).

If a Respondent fails to file an answer as required or fails to appear at the hearing at the time fixed therefor, the Respondent is in default. Wis. Admin. Code § SPS 3.13. *See also* Wis. Admin. Code § HA 1.07(3)(b). Wisconsin Admin. Code § HA 1.07(3)(c) delineates the circumstances which constitute a failure to appear:

For a telephone or video hearing or prehearing, the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: (1) The failure to provide a telephone number to the division after it had been requested; (2) the failure to answer the telephone or videoconference line; (3) the failure to free the line for the proceeding; (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

Under Wis. Admin. Code § SPS 3.13, when a Respondent is in default, “the department may make findings and enter an order on the basis of the petition and other evidence.” *See also* Wis. Admin. Code § HA 1.07(3)(b) (“If a respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate. . . .”)

As stated in the February 11, 2021 Notice of Default and Order, Respondent is in default for failing to file an answer to the petition for administrative injunction and failing to appear at the telephone conference held on February 11, 2021. Accordingly, an order may be entered against Respondent on the basis of the petition and other evidence.

Unlicensed Practice

Wisconsin Stat. §§ 459.02(1) and 459.24(1)(b) require a license to engage in the practice of selling or fitting hearing aids, and to practice audiology. In the statute, “audiology” is defined, in part, as applying principles, methods, procedures, identification, and evaluation related to hearing. Wis. Stat. § 459.20(2).

Here, the undisputed facts establish that, on multiple occasions in 2020, Respondent engaged in the practice of selling or fitting hearing aids and practiced audiology without first obtaining the proper license as required by Wisconsin law. Respondent has made no argument to the contrary. Therefore, I conclude that Respondent violated Wis. Stat. §§ 459.02(1) and 459.24(1)(b) as alleged by the Department. As a result of such violations, appropriate resolution is the issuance of an administrative injunction pursuant to Wis. Stat. § 440.21(2) and Wis. Admin. Code. Ch. 3.

ORDER


Accordingly, it is ORDERED that Respondent is enjoined and prohibited from engaging in the practice of fitting and dealing in hearing aids and the practice of audiology, unless and until Respondent obtains the appropriate licensing credential required by Wis. Stat. Ch. 459.

IT IS FURTHER ORDERED that violation of this Order may result in a forfeiture of up to \$10,000 for each day of violation, in accordance with Wis. Stat. § 440.21(4)(a).

Dated at Madison, Wisconsin on April 2, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705
Telephone: (608) 267-2745
Fax: (608) 264-9885

By: _____


Sally J. Pederson

Senior Administrative Law Judge