

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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

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In the Matter of the Disciplinary Proceedings  
Against Shijie You, L.M.T., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0007400**

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**Division of Legal Services and Compliance Case No. 19 MAB 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 1 day of June, 2021.

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Member  
Massage Therapy and Bodywork Therapy Affiliated  
Credentialing Board



Before The  
State of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

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In the Matter of Disciplinary Proceedings Against  
SHIJIE YOU, L.M.T., Respondent

DHA Case No. SPS-20-0035  
DLSC Case No. 19 MAB 010

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PROPOSED DECISION AND ORDER

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

Shijie You, L.M.T.

[REDACTED]  
Hacienda Heights, CA 91745

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

PROCEDURAL HISTORY

On November 20, 2020, the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal complaint alleging that Respondent Shijie You, L.M.T., engaged in unprofessional conduct by failing to cooperate in a timely manner with the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board's (Board) investigation of a complaint filed against Respondent, in violation of Wis. Admin. Code § MTBT 5.02(19). Administrative Law Judge Kristin Fredrick (ALJ) was assigned to the matter.

The Division served Respondent on November 20, 2020, by sending a copy of the Notice of Hearing and Complaint to Respondent's address on file with the Department via certified and regular first-class mail, pursuant to Wis. Admin. Code § SPS 2.08. On December 14, 2020, the Notice of Hearing and Complaint sent to Respondent via regular first-class mail were returned to the Department by the U.S. Postal Service marked "Return to Sender" and "Unable to Forward."

On January 7, 2021, the Notice of Hearing and Complaint sent to Respondent via certified mail were returned to the Department by the U.S. Postal Service marked "Return to Sender" and "Unable to Forward." The Division also emailed a copy of the Notice of Hearing and Complaint to Respondent's email address on file with the Department on November 20, 2020, but the email bounced back as undeliverable.

Respondent was required to file an Answer within twenty (20) days from the date of service, pursuant to Wis. Admin. Code § SPS 2.09(4); however, no Answer was filed. After the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for January 4, 2021. The ALJ sent notice of the conference by U.S. mail to Respondent. The notice ordered Respondent to contact the ALJ no later than January 1, 2021, to provide his current telephone number. The notice also stated that if Respondent failed to appear at the scheduled conference, default judgment may be entered against him.

On December 28, 2020, a friend of the Respondent emailed the ALJ and advised that the Respondent had returned to China in April 2019. Respondent failed to contact the ALJ by January 1, 2021, with his current telephone number. At the prehearing conference on January 4, 2021, Respondent failed to appear. The Division provided the ALJ with Respondent's telephone number on file with the Department. The ALJ called Respondent at that number but there was no answer and no ability to leave a voicemail message. The ALJ also emailed Respondent at his last known email address and asked him to respond by 11:00 a.m., or the ALJ would entertain the Department's motion for default. The Respondent failed to respond.

On January 4, 2021, the Division moved for default judgment, pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c). The ALJ issued a Notice of Default against Respondent on January 4, 2021, and ordered that the Division file a recommended proposed decision and order by February 3, 2021. The Division timely filed its recommended Proposed Decision and Order.

### FINDINGS OF FACT

#### Facts Related to the Alleged Violations

1. Respondent Shijie You, L.M.T., is licensed in the state of Wisconsin to practice massage therapy and bodywork therapy, having license number 12144-146, first issued on January 2, 2013, and current through February 28, 2021. (Complaint ¶ 1).

2. Respondent's last known address on file with the Department is [REDACTED] Hacienda Heights, California 91745. (Complaint ¶ 2).

3. On October 16, 2017, the Division received an anonymous complaint alleging that individuals at Shijie You Massage in Eau Claire, Wisconsin (Facility), provided unlicensed massage and sexual services. (Complaint ¶ 3).

4. During the Division's investigation of the complaint, the Facility provided Respondent's license to practice massage therapy and bodywork therapy in Wisconsin and he was referred to the Board, which opened DLSC Case No. 19 MAB 010 for investigation. (Complaint ¶ 4).

5. On March 30, 2020, a Division investigator, on behalf of the Board, emailed a letter to Respondent at his email address on file with the Department, [REDACTED] requesting a response to the complaint. The email was returned undeliverable. (Complaint ¶ 5).

6. On April 2, 2020, a Division investigator, on behalf of the Board, sent a letter to Respondent via U.S. Mail at his mailing address on file with the Department requesting a response to the complaint. The Respondent failed to respond. (Complaint ¶ 6).

7. On May 22, 2020, a Division investigator, on behalf of the Board, called the Respondent at his telephone number on file with the Department, [REDACTED]. A female answered and the investigator left a message to have Respondent call back. Respondent failed to respond. (Complaint ¶ 7).

8. To date, the Division has not received a response to the complaint from Respondent. (Complaint ¶ 8).

9. On December 28, 2020, the ALJ received an email from a person purporting to be Respondent's friend indicating that Respondent returned to China on April 8, 2019, and will not be coming back.

#### Facts Related to Default

10. On November 20, 2020, the Notice of Hearing and Complaint were served on Respondent at his last known address on file with the Department by both certified and first-class mail, pursuant to Wis. Admin. Code § SPS 2.08. (Affidavit of Service ¶¶ 3-4).

11. On November 20, 2020, the Division emailed a copy of the Notice of Hearing and Complaint to Respondent at his last known email address on file with the Department, which bounced back as undeliverable. (Affidavit of Service ¶ 5; Ex. 1).

12. On December 14, 2020, the Notice of Hearing and Complaint sent to Respondent via regular first-class mail were returned to the Department by the U.S. Postal Service marked "Return to Sender" and "Unable to Forward." (Affidavit of Service ¶ 6; Ex. 2).

13. On January 7, 2021, the Notice of Hearing and Complaint sent to Respondent via certified mail were returned to the Department by the U.S. Postal Service marked "Return to Sender" and "Unable to Forward." (Affidavit of Service ¶ 7; Ex. 3).

14. Respondent failed to file an Answer to the Complaint.

15. After the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for January 4, 2021. The ALJ sent notice of the conference by U.S. mail to Respondent. The notice ordered Respondent to contact the ALJ no later than January 1, 2021, to provide his current telephone number. The notice also stated that if Respondent failed to appear at the scheduled conference, default judgment may be entered against him.

16. Respondent failed to contact the ALJ by January 1, 2021 with his current telephone number.

17. At the prehearing conference on January 4, 2021, Respondent failed to appear. The Division provided the ALJ with Respondent's telephone number on file with the Department. The ALJ called Respondent but there was no answer and no ability to leave a voicemail message. The ALJ also emailed Respondent at his last known email address and asked him to respond by 11:00 a.m. or the ALJ would entertain the Department's motion for default. The Respondent failed to respond.

18. On January 4, 2021, the Division moved for default judgment, pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

19. On January 4, 2021, the ALJ issued a Notice of Default and ordered that the Division file and serve a recommended proposed decision and order by February 3, 2021. According to the Notice, "[i]n light of Respondent's failure to file an Answer to the Complaint and failure to appear for the prehearing conference, the ALJ finds Respondent to be in default."

20. On February 3, 2021, the Division timely filed its recommended Proposed Decision and Order.

## DISCUSSION

### Jurisdictional Authority

Pursuant to Wis. Admin. Code § SPS 2.10(2), the undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1).

### Default

The Division properly served the Notice of Hearing and Complaint upon Respondent by mailing copies to him at his last known address. Service by mail is complete upon mailing. Wis. Admin. Code § SPS 2.08(1). Under Wis. Admin. Code § SPS 2.14, if a Respondent "fails to answer as required by s. SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence." *See also* Wis. Admin. Code § HA 1.07(3)(c).

Here, Respondent violated Wis. Admin. Code § SPS 2.09(4) by failing to file an Answer to the Complaint within 20 days from the date of service. Respondent also failed to appear at the prehearing telephone conference on January 4, 2021, and failed to provide updated contact information, as ordered by the ALJ. Therefore, Respondent is in default, and findings and an order may be entered on the basis of the Complaint.

### Violations

The Board has the authority to impose discipline against the Respondent pursuant to Wis. Stat. § 460.14. Following an investigation and disciplinary hearing, if the Board determines that a licensee has “[e]ngaged in unprofessional conduct in violation of the standards established in rules promulgated under s. 460.04(2)(a)” or “[v]iolated this chapter or any rule promulgated under this chapter,” it may “reprimand a license holder or deny, limit, suspend, or revoke a license under this chapter...” Wis. Stat. § 460.14(2)(g) and (j), respectively.

Wisconsin Administrative Code § MTBT 5.02 Unprofessional Conduct. “Unprofessional conduct” includes the following, or aiding, abetting, or conspiring the same:

(19) After a request by the board, failing to cooperate in a timely manner with the board’s investigation of complaints filed against the licensee. There is a rebuttable presumption that a licensee who takes longer than 30 calendar days to respond to a request of the board has not acted in a timely manner under this subsection.

Respondent violated Wis. Admin. Code § MTBT 5.02(19) by failing to cooperate in a timely manner with the Board’s investigation after a request by the Board. On March 30, 2020, a Division investigator, on behalf of the Board, emailed a letter to Respondent at his email address on file with the Department requesting a response to the complaint. The email was returned undeliverable. On April 2, 2020, a Division investigator, on behalf of the Board, sent a letter to Respondent via U.S. Mail at his mailing address on file with the Department requesting a response to the complaint. The Respondent failed to respond. On May 22, 2020, a Division investigator, on behalf of the Board, called the Respondent at his telephone number on file with the Department. A female answered and the investigator left a message to have Respondent call back. Respondent failed to respond. To date, the Respondent has failed to respond to or cooperate with the Division’s investigation inquiries and failed to file a response to the complaint.

By violating this rule of professional conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 460.14(2).

### Discipline

The Division recommends that Respondent be reprimanded, pursuant to the terms and conditions of the Order below.

The three purposes of discipline in a professional misconduct case are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976).

The recommended discipline is consistent with the purposes articulated in *Aldrich*. The allegations in the complaint of providing unlicensed massage and sexual services are serious ones.

By failing to cooperate with the Board's investigation of those allegations, Respondent impeded that investigation, thus putting public safety at risk.

The recommended discipline protects the public. "Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). Reprimanding the Respondent will remind him of his duty to timely respond to Board inquiries and indicate to Respondent that his failure to respond has serious consequences for his licensure.

The recommended discipline also deters other credential holders from engaging in similar conduct. Respondent has disregarded the Board's authority as well as the law in place to protect public health and welfare. Imposing anything less than a reprimand would not deter other credential holders from engaging in similar conduct and could imply that such conduct by a licensee is tolerable.

The recommended discipline is consistent with Board precedent. *See In the Matter of Disciplinary Proceedings Against Jeffrey A. LaBudde*, Order Number 0004815 (July 19, 2016) (massage therapist was reprimanded and his right to renew was suspended until he completed education for failing to respond to the Board's inquiries and practicing without a current license).<sup>1</sup> The recommended discipline is also consistent with the affiliated Board's precedent. *See In the Matter of Disciplinary Proceedings Against Thomas E. Goodrich, M.D.*, Order Number 0006139 (April 17, 2019) (doctor was reprimanded for failing to cooperate in a timely manner with the board's investigation of a complaint filed against him).<sup>2</sup>

Based upon the facts of this case and the factors set forth in *Aldrich*, issuance of a reprimand to the Respondent is reasonable, consistent with the purposes of discipline and warranted.

### Costs

The Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. *See Wis. Stat. § 440.22(2)*. In exercising such discretion, the Board must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d. 237, 751 N.W.2d 385. In previous orders, Boards have considered the following factors when determining if all or part of the costs should be assessed against the Respondent: (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, funded by other licensees; and (7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, LS0802183CHI (Aug. 14, 2008). It is within the Board's discretion as to which of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

<sup>1</sup> This decision is available online at: <https://online.drl.wi.gov/decisions/2016/ORDER0004815-00012866.pdf>

<sup>2</sup> This decision is available online at: <https://online.drl.wi.gov/decisions/2019/ORDER0006139-00015400.pdf>



Considering the above factors, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings. Respondent defaulted and the factual allegations identified in this decision were deemed admitted. Respondent failed to cooperate with the Board's investigation after repeated attempts to contact him. Finally, Respondent failed to provide current contact information to the ALJ, failed to appear at the prehearing conference, and failed to file an Answer to the Complaint or otherwise provide any argument regarding the allegations brought against his license to practice massage therapy and bodywork therapy in Wisconsin.

The Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. It would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Therefore, it is appropriate for Respondent to pay the full costs of the investigation and this proceeding, as determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that Respondent Shijie You, L.M.T., License No. 12144-146 is hereby REPRIMANDED.

IT IS FURTHER ORDERED that Respondent 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 the address below:

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)

Respondent may also submit this information online via DSPS' Monitoring Case Management System, here:

<https://dpsmonitoring.wi.gov>

IT IS FURTHER ORDERED that in the event Respondent violates any term of this Order, Respondent's license (No. 12144-146), or the right to renew his license, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board may, in addition and/or in the alternative refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

IT IS FURTHER ORDERED that the terms of the Order are effective the date the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin, on this 5<sup>th</sup> day of March, 2021.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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Madison, Wisconsin 53705  
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By: 

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Kristin P. Fredrick  
Administrative Law Judge