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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 involving Xiaoye Wan, Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0007708**

Division of Legal Services and Compliance Case No. 19 UNL 159

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 3rd day of December, 2021.

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 Xiaoye Wan, Respondent

DHA Case No. SPS-21-0024
DLSC Case No. 19 UNL 159

PROPOSED DECISION AND ORDER

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

Ms. Xiaoye Wan

West Allis, WI 53214

Wisconsin 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

This proceeding was initiated on April 9, 2021, when the Department of Safety and Professional Services, Division of Legal Services and Compliance (Department), filed a Notice of Hearing and Petition for Administrative Injunction against Xiaoye Wan (Respondent) alleging that she provided massage therapy without a license in the state of Wisconsin, in violation of Wis. Stat. § 460.02. Administrative Law Judge Angela Chaput Foy (ALJ) was assigned to the matter.

The Department served Respondent with a copy of the Notice of Hearing and Petition for Administrative Injunction on April 9, 2021, by sending them to her last known address via certified and regular mail, pursuant to Wis. Admin. Code § SPS 3.07(1). Respondent failed to file an answer within 20 days from the date of service, as required by Wis. Admin. Code § SPS 3.08(4).

Following the expiration of the 20-day period to file an answer, the ALJ scheduled a telephone prehearing conference for May 19, 2021. Notice of this prehearing conference was

mailed to both parties. At the prehearing conference, the ALJ called Respondent at a number provided by the Department. The ALJ identified herself and the reason for the call, but due to a language barrier, the ALJ and Department Attorney were unable to understand the individual, and the individual ended the call. It is unknown if the individual that answered the call was the Respondent. The ALJ attempted to call Respondent again, but the same individual answered and promptly hung up. The Department moved for default based on Respondent's failure to file an answer and failure to appear at the May 19, 2021 prehearing conference, pursuant to Wis. Admin. Code §§ SPS 3.13 and HA 1.07(3)(c). On May 21, 2021, the ALJ issued a Notice of Default and Order against Respondent.

On June 11, 2021, the ALJ issued an Order rescinding the Notice of Default and ordered the Department to serve Respondent with copies of the Notice of Hearing, Petition for Administrative Injunction, and the Notice of Prehearing Conference and Order Rescinding Default, dated June 11, 2021, translated into her native language. The Order also required Respondent to file an answer within 20 days of service and scheduled another prehearing conference on August 31, 2021, where the Department would provide an interpreter.

The Department served the translated documents on Respondent by sending a copy to her last known address via certified and regular first-class mail, pursuant to Wis. Admin. Code § SPS 3.07(1). Respondent failed to file an answer within 20 days from the date of service of the translated documents, as ordered by the ALJ, and failed to appear at the prehearing conference on August 31, 2021.

Based on Respondent's failure to file an answer and failure to appear at the August 31, 2021 prehearing conference, the Department moved for a finding that Respondent was in default pursuant to Wis. Admin. Code §§ SPS 3.13 and HA 1.07(3)(c).

On September 3, 2021, the ALJ issued a Notice of Default and Order against Respondent and required the Department to file a recommended Proposed Decision and Order by October 4, 2021.

FINDINGS OF FACT

Facts as Alleged in Petition for Administrative Injunction

1. Respondent Xiaoye Wan (DOB xx/xx/1975) is not and has never been licensed to practice massage therapy and bodywork therapy in the State of Wisconsin.
2. Respondent's last known address is 1 West Allis, Wisconsin 53214.
3. On October 31, 2019, Respondent was arrested for prostitution at Asian Massage Therapy in West Allis, Wisconsin, after a police investigation revealed that Respondent offered sexual favors for money to undercover officers during a massage.

4. Respondent admitted to working at Asian Massage Therapy and providing massage therapy services to clients. Respondent also said that the owner of Asian Massage Therapy encouraged her to offer customers sexual services for an extra tip at the end of a massage.

5. On December 23, 2019, Respondent was charged with one count of Prostitution-Sexual Contact, a misdemeanor, in violation of Wis. Stat. § 944.30(1m)(e), in Milwaukee County Circuit Court Case No. 2019CM003637.

6. Respondent failed to appear for her court appearances and a warrant was issued for her arrest. On October 1, 2020, the forfeiture notice sent by the Court to Respondent was returned unclaimed and undelivered.

Facts Related to Default

7. On April 9, 2021, the Department served Respondent with the Petition for Administrative Injunction and Notice of Hearing by sending a copy to her last known address by both certified and regular mail, pursuant to Wis. Admin. Code § SPS 3.07(1).

8. The Petition for Administrative Injunction and Notice of Hearing sent to Respondent via both certified and regular mail were returned to the Department by the U.S. Postal Service marked "Return to Sender" and "Unable to Forward."

9. Respondent failed to file an answer to the Petition for Administrative Injunction.

10. After the expiration of the 20-day period to file an answer, the ALJ scheduled a telephone prehearing conference for May 19, 2021. The ALJ sent notice of the conference by U.S. mail to both parties. The notice ordered Respondent to contact the ALJ no later than May 18, 2021, to provide a telephone number where she could be reached for the conference. The notice also stated that if Respondent failed to appear at the scheduled conference, default judgment may be entered against her.

11. Respondent failed to contact the ALJ by May 18, 2021, with her current telephone number.

12. At the prehearing conference on May 19, 2021, the Department provided the ALJ with a telephone number for Respondent from its file. The ALJ called Respondent at that number and an unidentified individual answered. The ALJ identified herself and the reason for the call, but due to a language barrier, the ALJ and Department Attorney were unable to understand the individual and the individual ended the call. The ALJ attempted to call the Respondent again, but the same individual answered and promptly hung up. It is unknown if the individual that answered the phone was the Respondent.

13. On May 19, 2021, the Department moved for a finding that Respondent was in default based on her failure to file an answer and failure to appear at the May 19, 2021 prehearing conference, pursuant to Wis. Admin. Code §§ SPS 3.13 and HA 1.07(3)(c). On May 21, 2021, the ALJ issued a Notice of Default against Respondent.

14. On June 11, 2021, the ALJ issued an Order rescinding the Notice of Default. Based on the exchange that occurred during the prehearing conference, the need for an interpreter in a companion case, the requirements of Wis. Stat. § 885.37¹, and to ensure due process, the ALJ ordered the Department to serve Respondent with copies of the Notice of Hearing, Petition for Administrative Injunction, and the Notice of Prehearing Conference and Order Rescinding Default, dated June 11, 2021, translated into her native language. The Order also required Respondent to file an answer within 20 days of service and scheduled another prehearing conference for August 31, 2021, where an interpreter would be provided by the Department.

15. On July 9, 2021, the Notice of Hearing, Petition for Administrative Injunction, and the Notice of Prehearing Conference and Order Rescinding Default dated June 11, 2021, translated into Chinese Mandarin, were served on Respondent at her last known address by both certified and regular mail, pursuant to Wis. Admin. Code § SPS 3.07(1).

16. The translated documents sent to Respondent via both certified and regular mail were returned to the Department by the U.S. Postal Service marked "Return to Sender" and "Unable to Forward."

17. Respondent failed to file an answer to the translated Petition for Administrative Injunction.

18. On August 31, 2021, Respondent failed to appear at the prehearing conference. The Department moved for default based on Respondent's failure to file an answer and failure to appear at the August 31, 2021 prehearing conference, pursuant to Wis. Admin. Code §§ SPS 3.13 and HA 1.07(3)(c).

19. On September 3, 2021, the ALJ issued a Notice of Default against Respondent and ordered the Department to file a recommended Proposed Decision and Order by October 4, 2021. The Order required the Department to send a translated copy of the Notice of Default and Order to Respondent.

20. The Department timely filed its recommended Proposed Decision and Order with the ALJ and sent the translated documents to Respondent at her last known address by both certified and regular mail.

DISCUSSION

¹ "[I]n any administrative contested case proceeding before a state, county or municipal agency, if the agency conducting the proceeding has notice that a party to the proceeding has a language difficulty because of the inability to speak or understand English, has a hearing impairment, is unable to speak or has a speech defect, the agency shall make a factual determination of whether the language difficulty or hearing or speaking impairment is sufficient to prevent the party from communicating with others, reasonably understanding the English testimony or reasonably being understood in English. If the agency determines that an interpreter is necessary, the agency shall advise the party that he or she has a right to a qualified interpreter. After considering the party's ability to pay and the other needs of the party, the agency may provide for an interpreter for the party at the public's expense." Wis. Stat. § 885.37(3)(b).

Jurisdictional Authority

The Department has the authority to conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice without a credential required under Chapters 440 to 480 of the Wisconsin Statutes. If the Department determines that a person has engaged in a practice without a credential, the Department may issue a special order enjoining the person from the continuation of the practice. Wis. Stat. § 440.21(1) and (2).

Pursuant to Wis. Admin. Code § SPS 3.09, the undersigned ALJ, an employee of the Department of Administration, Division of Hearings and Appeals, has authority to preside over administrative injunction proceedings in accordance with Wis. Stats. §§ 20.901 and 227.46(1).

Default

The Division properly served the Petition for Administrative Injunction and Notice of Hearing, including a copy translated into her native language, upon Respondent by mailing copies to her at her last known address. Wis. Stat. § 440.11(2). Service by mail is complete upon mailing. Wis. Admin. Code § SPS 3.07(1). "If the respondent fails to answer as required by s. SPS 3.08 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the department may make findings and enter an order on the basis of the petition and other evidence." Wis. Admin. Code § SPS 3.13; *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....").

Respondent violated Wis. Admin. Code § SPS 3.08(4) by failing to file an answer to the Petition for Administrative Injunction within 20 days from the date of service. Respondent also failed to appear and participate in the prehearing telephone conference on August 31, 2021. Therefore, Respondent is in default, and findings and an order may be entered on the basis of the Petition.

Unlicensed Practice

No person may provide massage therapy or bodywork therapy unless the person is licensed under Chapter 460 of the Wisconsin Statutes. Wis. Stat. § 460.14.

The facts as stated in the Petition for Administrative Injunction are undisputed. Respondent provided massage therapy to clients at Asian Massage Therapy in West Allis, Wisconsin, without a license issued by the Wisconsin Massage Therapy and Bodywork Therapy Affiliated Credentialing Board.

Therefore, pursuant to Wis. Stat. § 440.21(2) and Wis. Admin. Code Ch. SPS 3, a special order enjoining Respondent from continuing to practice massage therapy or bodywork therapy until she is properly licensed in the state of Wisconsin is reasonable and warranted.

SPECIAL ORDER FOR ADMINISTRATIVE INJUNCTION

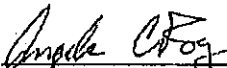
For the reasons set forth above, IT IS ORDERED that Respondent Xiaoye Wan is hereby enjoined and prohibited from practicing massage therapy or bodywork therapy in the state of Wisconsin until she is properly licensed by the Wisconsin Massage Therapy and Bodywork Therapy Affiliated Credentialing Board.

IT IS FURTHER ORDERED that in the event Respondent violates this Special Order, Respondent may be required to forfeit not more than \$10,000 for each offense, pursuant to Wis. Stat. § 440.21(4). Each day of the continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover such forfeiture.

IT IS FURTHER ORDERED that the terms of the Special Order are effective the date it is signed by the Department.

Dated at Madison, Wisconsin, on October 22, 2021.

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By: 
Angela Chaput Foy
Administrative Law Judge