

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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**Before The  
State Of Wisconsin  
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

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In the matter of a Petition for an Administrative  
Injunction Involving Shiyan Sun, Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0007788**

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**Division of Legal Services and Compliance Case No. 19 UNL 135**

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 28<sup>th</sup> day of January, 2022.



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Chief Legal Counsel  
Department of Safety and Professional Services



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

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In the Matter of Petition for an Administrative  
Injunction involving Shiyan Sun, Respondent.

DHA Case No. SPS-21-0070  
DLSC Case No. 19 UNL 135

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**PROPOSED DECISION AND ORDER**

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

Shiyan Sun

Chicago, IL 60608

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

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

**PROCEDURAL HISTORY**

On September 7, 2021, 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 Shiyan Sun (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 the Respondent on September 7, 2021, by sending a copy of the Notice of Hearing and Petition for Administrative Injunction to her last known address via certified and regular mail, pursuant to Wis. Admin. Code § SPS 3.07(1). The Respondent failed to file an answer as required. Wis. Admin. Code § SPS 3.08(4).

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Following the expiration of the 20-day time to answer, the ALJ scheduled a telephone prehearing conference for October 15, 2021, at 10:00 a.m. Notice of the conference was sent to both parties. The Respondent failed to appear for the prehearing conference.

On October 15, 2021, the Department moved for default based on the Respondent's failure to file an answer and failure to appear at the prehearing conference, pursuant to Wis. Admin. Code §§ SPS 3.13 and HA 1.07(3)(c).

On October 19, 2021, the ALJ issued a Notice of Default and Order against the Respondent and ordered the Department to file a recommended Proposed Decision and Order by November 18, 2021.

### FINDINGS OF FACT

#### Facts Related to the Alleged Violations

Findings of Fact 1-5 are taken from the Department's Petition for Administrative Injunction against the Respondent in this matter.

1. Respondent Shiyan Sun (Year of Birth 1958) is not and has never been licensed in the state of Wisconsin to practice massage therapy and bodywork therapy.

2. Respondent's last known address is : Chicago, Illinois 60608.

3. At all times relevant to this proceeding, Respondent was employed as a massage therapist and bodywork therapist at a spa located in Appleton, Wisconsin (Spa).

4. On September 18, 2019, the Appleton Police Department executed a search warrant at the Spa and arrested Respondent.

5. Respondent told officers that she provided massage therapy services at the Spa but did not have a massage therapist and bodywork therapist license.

6. On September 19, 2019, Respondent was charged with Keeping Place of Prostitution, a class H felony, in violation of Wis. Stat. § 944.34(1), and Prostitution-Masturbation, a class A misdemeanor, in violation of Wis. Stat. § 944.30(1m)(d), in Outagamie County Case Number 2019CF000811 (Outagamie County Case). On February 6, 2020, Respondent failed to appear in Court and a bench warrant was authorized and issued on February 10, 2020. On November 23, 2020, a cash bond of \$500 was forfeited by Respondent due to her nonappearance in Court. The Outagamie County Case remains pending against Respondent.

#### Facts Related to Default

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

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8. On September 17, 2021, the U.S. Postal Service returned both mailings to the Department marked as "Return to Sender, Unclaimed, Unable to Forward."

9. The 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 October 15, 2021. On September 27, 2021, the ALJ mailed the notice of the prehearing conference to the Respondent at her last known address by regular mail, ordering her to contact the ALJ no later than October 14, 2021, to provide her current telephone number. On October 6, 2021, the U.S. Postal Service returned the notice to the ALJ marked, "Return to Sender, Attempted – Not Known, Unable to Forward."

11. The Respondent failed to contact the ALJ by October 14, 2021.

12. On October 15, 2021, the Respondent failed to appear at the prehearing conference. The Department moved for default based on the Respondent's failure to file an answer and failure to appear at the prehearing conference, pursuant to Wis. Admin. Code §§ SPS 3.13 and HA 1.07(3)(c).

13. On October 19, 2021, the ALJ issued a Notice of Default and Order against the Respondent and ordered the Department to file a recommended Proposed Decision and Order by November 18, 2021. On October 19, 2021, the ALJ mailed the notice and order to the Respondent at her last known address by regular mail. On November 1, 2021, the U.S. Postal Service returned the notice to the ALJ marked, "Return to Sender, Refused, Unable to Forward."

14. The Department timely filed its recommended Proposed Decision and Order.

## DISCUSSION AND CONCLUSIONS OF LAW

### 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, Wis. Stats. 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).

The Division of Hearings and Appeals has authority to issue this proposed decision and order pursuant to Wis. Stat. § 227.43(1m) and Wis. Admin. Code § SPS 3.09.

### Default

The Department properly served the Petition for Administrative Injunction and Notice of Hearing on the Respondent by mailing copies to her at her last known address. Wis. Stat. §

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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....").

The Division of Hearings and Appeals properly served the Respondent with its notices pursuant to Wis. Admin. Code § HA 1.03 (The division may serve decisions, orders, notices, and other documents by first class mail).

Here, the Respondent failed to file an answer to the Petition for Administrative Injunction within 20 days from the date of service, in violation of Wis. Admin. Code § SPS 3.08(4). The Respondent also failed to appear and participate in the prehearing telephone conference on October 15, 2021. Therefore, Respondent is in default, and findings and an order may be entered based on 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. § 460.02.

The facts as stated in the Petition for Administrative Injunction are undisputed. On September 18, 2019, the Respondent admitted to the Appleton Police Department that she provided massage therapy services 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 Shiyan Sun 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 the Respondent violates this Special Order, the 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 December 13, 2021.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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Email: Angela.ChaputFoy@wisconsin.gov

By:   
Angela Chaput Foy  
Administrative Law Judge

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