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

In the Matter of the Disciplinary Proceedings
Against Ping Jiang, L.M.T., Respondent

FINAL DECISION AND ORDER

Order No. **ORDER 0007892**

Division of Legal Services and Compliance Case No. 19 MAB 029

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 15th day of March, 2022.

Member
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 Ping Jiang, L.M.T., Respondent

DHA Case No. SPS-21-0081
DLSC Case No. 19 MAB 029

RECOMMENDED PROPOSED DECISION AND ORDER

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

Ping Jiang, L.M.T.

Monterey Park, CA 91776

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 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 October 22, 2021, the Department of Safety and Professional Services, Division of Legal Services and Compliance (Department), served the Notice of Hearing and the Complaint in this matter on Ping Jiang, L.M.T. (Respondent) by certified and regular first-class mail, consistent with Wis. Admin. Code § SPS 2.08. The Respondent failed to file an answer to the Complaint as required. Wis. Admin. Code § SPS 2.09(4).

Following the expiration of the 20-day period to file an answer, Administrative Law Judge (ALJ) Angela Chaput Foy scheduled a telephone prehearing conference for December 1, 2021, at 10:00 a.m. The Respondent did not appear.

On December 1, 2021, the Department moved for a finding of default against Respondent for failing to file an answer and failing to appear at the prehearing conference, pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

On December 2, 2021, the ALJ issued a Notice of Default against Respondent and ordered that the Department file a recommended Proposed Decision and Order by January 17, 2022. The Department timely filed its Proposed Decision and Order.

FINDINGS OF FACT

Facts as Stated in the Complaint

1. Respondent Ping Jiang, L.M.T., is licensed in the state of Wisconsin to practice massage therapy or bodywork therapy, having license number 14041-146, first issued on November 3, 2016, and current through February 28, 2023.
2. The most recent address on file with the Department for Respondent is
3. At all times relevant to this proceeding, Respondent worked as a massage therapist at a massage parlor in West Allis, Wisconsin (Parlor).
4. On July 24, 2019, an officer from the West Allis Police Department (WAPD) entered the Parlor in an undercover capacity and paid Respondent for a one-hour massage. During the massage, Respondent massaged the officer's thigh and asked if he wanted more while gesturing toward his genitals. Respondent repeatedly grabbed the officer's arm and hand and pulled toward her legs and breasts. Respondent moved her hand toward the officer's groin and brushed her hand over his genitals.
5. Respondent was subsequently arrested for prostitution-related offenses.
6. On December 27, 2019, the Department received a complaint from the WAPD regarding the aforementioned conduct by Respondent.
7. On May 19, 2021, a Department investigator sent an email to Respondent at her email address on file with the Department, asking for a response to the complaint. No response was received.
8. On July 1, 2021, a Department investigator sent another email to Respondent at her email address on file with the Department, and also sent a letter to Respondent at her mailing address on file with the Department, asking for a response to the complaint.
9. On July 12, 2021, a Department investigator called Respondent at her phone number on file with the Department. The phone number's mailbox was not setup which prevented a message from being left for Respondent.

10. On July 16, 2021, a Department investigator sent another email to Respondent at her email address on file with the Department, and also sent a letter to Respondent at her mailing address on file with the Department via certified mail, asking for a response to the complaint. No response was received.

11. On July 30, 2021, a Department investigator received the letter sent on July 16, 2021, via certified mail which was returned and marked "unable to forward."

12. Respondent had not responded to the Department's requests as of the date of the Complaint.

Facts Related to Default

13. On October 22, 2021, the Department served the Notice of Hearing and the Complaint on the Respondent by both certified and regular first-class mail at her last known address on file with the Department consistent with Wis. Admin. Code § SPS 2.08. The Department also emailed the Notice of Hearing and the Complaint to Respondent at her last known email address on file with the Department.

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

15. Following the expiration of the 20-day period to file an answer, the ALJ scheduled a telephone prehearing conference for December 1, 2021. On November 11, 2021, the ALJ mailed notice of the prehearing conference to both parties by email and regular mail using the Respondent's address on file with the Department, with instructions that the Respondent contact the ALJ with a telephone number at which she could be reached for the conference no later than November 30, 2021. The notice also stated that if Respondent failed to appear at the scheduled conference, default judgment may be entered against her.

16. The Respondent did not contact the ALJ and did not provide a telephone number.

17. On December 1, 2021, the Respondent failed to appear at the prehearing conference. The ALJ attempted to reach the Respondent at the telephone number that the Respondent had on file with the Department. The ALJ called Respondent at that number three times but there was no answer. The ALJ left a voice mail, and also emailed Respondent at the email address on file with the Department. No response was received via email or telephone.

18. On December 1, 2021, the Department moved for a finding of 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 2.14 and HA 1.07(3)(c).

19. On December 2, 2021, the ALJ issued a Notice of Default and ordered that the Department file and serve a recommended proposed decision and order by January 17, 2022. On December 2, 2021, the ALJ emailed and mailed the notice and order to the Respondent at her address on file with the Department.

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

DISCUSSION AND CONCLUSIONS OF LAW

Jurisdictional Authority

The Massage Therapy and Bodywork Therapy Affiliated Credentialing Board (Board) has the authority to impose discipline against the Respondent pursuant to Wis. Stat. § 460.14.

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 2.10(2).

Default

The Department properly served the Notice of Hearing and Complaint on Respondent by mailing copies to her at her last known address on file with the Department. Service by mail is complete upon mailing. Wis. Admin. Code § SPS 2.08(1).

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.).

An answer to a complaint shall be filed within 20 days from the date of service of the complaint. Wis. Admin. Code § 2.09(4). If a respondent "fails to answer as required by s. SPS 2.09 or fails to appear at 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." Wis. Admin. Code § SPS 2.14.

For a telephone prehearing conference, 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 prehearing conference: (1) the failure to provide a telephone number to the ALJ after it had been requested; (2) the failure to answer the telephone; (3) the failure to free the line for the proceeding; and (4) the failure to be ready to proceed with the prehearing conference as scheduled. Wis. Admin. Code § HA 1.07(3)(c).

Here, the Respondent failed to file an answer to the Complaint, failed to appear at the prehearing telephone conference on December 1, 2021, failed to provide a telephone number to the ALJ after it had been requested, failed to answer the telephone when the ALJ called, and failed to be ready to proceed with the prehearing conference as scheduled. Therefore, the Respondent is in default, and findings and an order may be entered based on the Complaint.

Violations

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.

“Unprofessional conduct” includes the following, or aiding, abetting, or conspiring the same:

(15) Engaging in sexually explicit conduct, sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a client, a client’s immediate family member, or a person responsible for the client’s welfare. For purposes of this subsection, the following shall apply:

(a) Sexual nature of contact shall be determined from the totality of the circumstances and is presumed when the massage therapist or bodywork therapist has contact with a client’s intimate parts without legitimate professional justification for doing so.

...

(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.

Wis. Admin. Code §§ MTBT 5.02 (15) and (19).

Respondent violated Wis. Admin. Code § MTBT 5.02(15) by engaging in sexually explicit conduct with an undercover officer posing as a client. Respondent was working as a massage therapist at a massage parlor in West Allis, Wisconsin. On July 24, 2019, an officer from the West Allis Police Department (WAPD) entered the Parlor in an undercover capacity and paid Respondent for a one-hour massage. During the massage, Respondent massaged the officer’s thigh and asked if he wanted more while gesturing toward his genitals. Respondent repeatedly grabbed the officer’s arm and hand and pulled toward her legs and breasts. Respondent moved her hand toward the officer’s groin and brushed her hand over his genitals.

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 May 19, 2021, a Department investigator, acting on behalf of the Board, emailed Respondent at her email address on file with the Department requesting a response to the complaint. No response was received. On July 1, 2021, a Department investigator again emailed Respondent at her email address on file with the Department and sent a letter to Respondent via U.S. Mail at her mailing address on file with the Department requesting a response to the complaint. On July 12, 2021, a Department investigator called the Respondent at her telephone number on file with the Department. The mailbox was not set up and the investigator could not leave a message. On July 16, 2021, a Department investigator emailed Respondent again at her email address on file with the

Department and sent a letter to Respondent via certified mail at her mailing address on file with the Department requesting a response to the complaint. No response was received. On July 30, 2021, a Department investigator received the letter sent on July 16, via certified mail which was returned and marked "unable to forward." To date, the Department has not received a response to the complaint from Respondent.

By engaging in unprofessional conduct and violating rules of professional conduct, along with her failure to participate in this proceedings and make any argument to the contrary, the Respondent is subject to discipline pursuant to Wis. Stat. § 460.14(2).

Discipline

The Department recommends that Respondent's massage therapy and bodywork therapy license be revoked. Because the Respondent has been found in default for her failure to participate in any part of these proceedings, and because the recommended discipline is consistent with the purposes articulated in *Aldrich* and case law, I adopt the Department's recommendation.

The three purposes of discipline 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, 237 N.W.2d 689 (1976). The primary purpose must be to protect the public interest and assure the moral fitness and professional competency of those who hold professional license. See *State v. MacIntyre*, 41 Wis. 2d 481, 484, 164 N.W.2d 235 (1969).

The recommended discipline is consistent with the purposes articulated in *Aldrich* and *MacIntyre* and is necessary to protect the public and deter other licensees from engaging in similar conduct. Although promoting rehabilitation is one of the purposes of discipline, rehabilitation is unknown in this case. The Respondent failed to respond to multiple requests for information from the Department, failed to provide an answer following the Notice of Hearing and Complaint, and failed to appear for the prehearing conference. Therefore, the Board cannot determine whether any rehabilitative measures would be effective, but the proposed discipline may encourage rehabilitation.

Revocation of Respondent's license will serve to protect the public from other instances of misconduct. "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). When a license is granted to an individual, Wisconsin is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the state cannot assure the public of the licensee's competence to practice the profession, then revocation is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984). In this case, Respondent's misconduct of engaging in sexually explicit contact with a client is a serious violation of the law. Furthermore, by failing to cooperate with the Board's investigation of those allegations, Respondent impeded that investigation, thus putting public safety at risk. The Board

cannot assure the public of Respondent's moral fitness and competency under such circumstances. Therefore, revocation is necessary to protect the public.

Revocation is also necessary to deter other credential holders from engaging in similar conduct. Sexual misconduct is a serious violation of the law. By failing to cooperate with the investigation, Respondent has disregarded the Board's authority as well as the law in place to protect public health and welfare. It is important that licensees understand that revocation is a potential consequence of such serious misconduct. Revocation of Respondent's license is an appropriate response to her disrespect for the law, the public welfare, and the licensing authority governing her profession.

Considering the facts of this case and the factors set forth in *Aldrich*, revocation of Respondent's license to practice massage therapy and bodywork therapy license is reasonable 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.

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 committed a level of unprofessional conduct that warrants revocation. 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 participate in these proceedings.

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 the license of Respondent Ping Jiang, L.M.T., to practice massage therapy or bodywork therapy in the state of Wisconsin (license number 14041-146), and the right to renew said license, is hereby REVOKED.

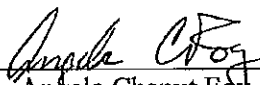
IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

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

Dated at Madison, Wisconsin on February 16, 2022.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 
Angela Chaput Foy
Administrative Law Judge