

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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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 Peter Paik, Respondent.

FINAL DECISION AND ORDER

Order No. _____

ORDER 0008069

Division of Legal Services and Compliance Case No. 18 UNL 107

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 5th day of August, 2022.

Aloysius Rohmeyer
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 Involving Peter Paik, Respondent.

DHA Case No. SPS-22-0025
DLSC Case No. 18 UNL 107

PROPOSED DECISION AND ORDER

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

Peter Paik
4120 Monona Dr.
Madison, WI 53716

Wisconsin Department of Safety and Professional Services
P.O. Box 8366
Madison, WI 8366

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

Attorney Alicia M. Kennedy
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

The Notice of Hearing and Petition for an Administrative Injunction in this matter were served on Peter Paik (Respondent) by the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), on April 28, 2022, by both certified and regular mail to the Respondent's last known address pursuant to Wis. Admin. Code § SPS 3.07. The Respondent failed to file an answer to the Petition within 20 days from the date of service, as required by Wis. Admin. Code § SPS 3.08.

After the expiration of the 20-day period to file an answer, Administrative Law Judge (ALJ) Angela Chaput Foy scheduled a telephone prehearing conference for May 10, 2022. Notice of this prehearing conference was sent to both parties. Attorney Alicia Kennedy appeared on behalf of the Division. The Respondent did not appear.

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

On May 11, 2022, the ALJ issued a Notice of Default against the Respondent and ordered the Division to file a recommended proposed decision and order by June 10, 2022. The Division timely filed its recommended Proposed Decision and Order.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-10 are taken from the Division's Petition for an Administrative Injunction filed in this matter.

1. Respondent Peter Paik is not, and has never been, permitted in the state of Wisconsin as a juvenile martial arts instructor.
2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 4120 Monona Drive, Madison, WI 53716-1662.
3. On October 17, 2018, the Department received a complaint alleging that Respondent's business, Paik's Martial Arts (PMA), was providing improper juvenile martial arts instruction. The Division of Legal Services and Compliance (DLSC) subsequently opened Case Number 18 UNL 107 for investigation.
4. On October 31, 2018, the Department sent a letter to Respondent to request a response to the complaint.
5. PMA's Facebook page has several posts showing minors in classes being instructed by Respondent.
6. On March 15, 2020, PMA posted on its Facebook page that it was closing for the COVID-19 pandemic but would provide virtual classes.
7. Between March 15 and May 27, 2020, PMA posted several workouts and videos of martial arts positions on its Facebook page.
8. On May 27, 2020, PMA posted on its Facebook page that it was tentatively opening on June 1, 2020, with limitations.
9. Since July 21, 2020, PMA's Facebook posts indicate that it is open, actively providing classes to minors, and that it held a summer camp during the summers of 2020 and 2021.
10. As of March 2022, Respondent was listed on PMA's website as an instructor.

Facts Related to Default

11. On April 28, 2022, the Division served the Petition for an Administrative Injunction and Notice of Hearing on the Respondent by both certified and regular mail to his last known address.

12. The Respondent failed to file an answer to the Petition.

13. Following the expiration of the 20-day period to file an answer, the ALJ scheduled a telephone prehearing conference for May 10, 2022 at 9:30 a.m. The ALJ sent notice of the conference by U.S. mail to the Respondent, but it was returned. The notice ordered the Respondent to contact the ALJ with a telephone number at which he could be reached no later than May 9, 2022. The notice also stated that if the Respondent failed to appear at the scheduled conference, default judgment may be entered against him.

14. The Respondent failed to contact the ALJ by May 9, 2022 with a telephone number.

15. On May 10, 2022, the Respondent failed to appear at the prehearing conference. Neither the ALJ nor the Department had contact information for the Respondent other than the mailing address. The ALJ waited for the Respondent for approximately 15 minutes, but the Respondent did not contact the ALJ or the Department.

16. On May 10, 2022, the Division moved for a finding that the Respondent was in default based on his failure to answer the Petition for an Administrative Injunction and failure to appear at the prehearing conference.

17. On May 11, 2022, the ALJ issued a Notice of Default against the Respondent and ordered the Division to file a recommended proposed decision and order by June 10, 2022.

18. The Division timely filed its recommended proposed decision and order.

DISCUSSION AND CONCLUSIONS OF LAW

Jurisdictional Authority

The Department has 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 Division properly served the Petition for Administrative Injunction and Notice of Hearing on the Respondent by mailing copies to him at his last known address. Wis. Stat. § 440.11(2). Service 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 notice 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 May 10, 2022. Therefore, the Respondent is in default, and findings and an order may be entered based on the Petition.

Unlicensed Practice

No person may act as a juvenile martial arts instructor without a license or permit issued by the Department. Wis. Stat. § 440.03(17)(c). “Martial arts instruction” means instruction of self-defense or combat for a fee. Wis. Stat. §§ 440.17(a)2 and (c).

The facts as stated in the Petition for Administrative Injunction are undisputed. On October 17, 2018, the Department received a complaint alleging that the Respondent’s business, Paik’s Martial Arts, was providing improper juvenile martial arts instruction. During the Department’s investigation of the complaint, it found that the Respondent’s business posted pictures on Facebook showing minors being instructed by the Respondent; posted workouts and videos while the business was closed because of the COVID-19 pandemic between March 15 and May 27, 2020; advertised that it reopened in the summer of 2020, provided classes to minors and held a summer camp for minors during the summers of 2020 and 2021; and identified the Respondent as an instructor on the business’s website. This conduct constitutes unlicensed practice as a juvenile martial arts instructor, contrary to Wis. Stat. § 440.03(17)(c).

Therefore, pursuant to Wis. Stat. § 440.21(2) and Wis. Admin. Code Ch. SPS 3, a special order enjoining the Respondent from continuing to act as a juvenile martial arts instructor until he 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 the Respondent, Peter Paik, is hereby enjoined and prohibited from acting as a juvenile martial arts instructor in the state of Wisconsin in a capacity in which a credential is required until he is properly licensed by the Wisconsin Department of Safety and Professional Services. If the Department determines that there is probable cause to believe that the Respondent has violated any terms of this Administrative Injunction, the Department may refer the violations covered by this decision and order to any appropriate prosecutorial unit for review for possible criminal charges.

IT IS FURTHER ORDERED that the Respondent shall provide a copy of this Special Order for Administrative Injunction with any application submitted by the Respondent for a credential issued by the Department.

IT IS FURTHER ORDERED that if 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)(a). 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 July 8, 2022.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Tel. (608) 227-4027
Fax: (608) 264-9885

By: Angela Chaput Foy
Angela Chaput Foy
Administrative Law Judge

NOTICE OF RIGHTS OF APPEAL

TO: Peter Paik
Paiks Martial Arts
4120 Monona Dr.
Madison, WI 53716-1662

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is **August 5, 2022**. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for rehearing must be served upon the respondent at the address listed below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period. The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law. A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident, the proceedings shall be in the county where the dispute arose. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the final Decision and Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53(1)(a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable 30 day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

Department of Safety and Professional Services
4822 Madison Yards Way
P.O. Box 8368
Madison, WI 53708-8368

227.49 Petitions for rehearing in contested cases.

(1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.53 Parties and proceedings for review.

(1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review of the decision as provided in this chapter and subject to all of the following procedural requirements:

(a)

1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board, the credit union review board, or the savings institutions review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1. to 4.

2. Unless a rehearing is requested under s. 227.49, petitions for review of contested cases shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review under this

subdivision shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this subdivision commences on the day after personal service or mailing of the decision by the agency.

227.57 Scope of review.

(1) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, testimony thereon may be taken in the court and, if leave is granted to take such testimony, depositions and written interrogatories may be taken prior to the date set for hearing as provided in ch. 804 if proper cause is shown therefor.

(2) Unless the court finds a ground for setting aside, modifying, remanding or ordering agency action or ancillary relief under a specified provision of this section, it shall affirm the agency's action.

(3) The court shall separately treat disputed issues of agency procedure, interpretations of law, determinations of fact or policy within the agency's exercise of delegated discretion.

(4) The court shall remand the case to the agency for further action if it finds that either the fairness of the proceedings or the correctness of the action has been impaired by a material error in procedure or a failure to follow prescribed procedure.

(5) The court shall set aside or modify the agency action if it finds that the agency has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.

(6) If the agency's action depends on any fact found by the agency in a contested case proceeding, the court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. The court shall, however, set aside agency action or remand the case to the agency if it finds that the agency's action depends on any finding of fact that is not supported by substantial evidence in the record.

(7) If the agency's action depends on facts determined without a hearing, the court shall set aside, modify or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency's responsibility.

(8) The court shall reverse or remand the case to the agency if it finds that the agency's exercise of discretion is outside the range of discretion delegated to the agency by law; is inconsistent with an agency rule, an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained to the satisfaction of the court by the agency; or is otherwise in violation of a constitutional or statutory provision; but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(9) The court's decision shall provide whatever relief is appropriate irrespective of the original form of the petition. If the court sets aside agency action or remands the case to the agency for further proceedings, it may make such interlocutory order as it finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

(10) Upon such review due weight shall be accorded the experience, technical competence, and specialized knowledge of the agency involved, as well as discretionary authority conferred upon it. The right of the appellant to challenge the constitutionality of any act or of its application to the appellant shall not be foreclosed or impaired by the fact that the appellant has applied for or holds a license, permit or privilege under such act.