

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscga>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF

ELAINA RIVERA,
RESPONDENT.

ADMINISTRATIVE INJUNCTION

ORDER 0008172

Division of Legal Services and Compliance Case No. 22 UNL 047

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Elaina Rivera
Milwaukee, WI 53221

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

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Department of Safety and Professional Services (Department). The Department has reviewed this Stipulation and considers it acceptable.

Accordingly, the Department adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Respondent Elaina Rivera is not and has never been licensed to practice as a massage therapist or bodywork therapist in the state of Wisconsin.
2. On December 19, 2021, Respondent graduated from the Academy of Health after successfully completing a course of study in therapeutic massage and bodywork.
3. Respondent submitted an application for a massage therapy or bodywork therapy license to the Department prior to graduation. That application is pending.

4. Since graduation from massage therapy school and while her license application was pending, Respondent provided massage therapy services to clients at a spa in West Allis, Wisconsin, as an extern. Respondent has performed approximately four massages on clients with informed consent and under the supervision of the licensee/owner.

5. Respondent also represented that she was a "massage therapist" on her Facebook page, which she has since removed.

6. Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Department of Safety and Professional Services has jurisdiction in this matter pursuant to Wis. Admin. Code Ch. SPS 3 and Wis. Stat. § 440.21 and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5) and Wis. Admin. Code § SPS 3.11.

2. Pursuant to Wis. Stat. § 460.02, no person may provide massage therapy or bodywork therapy, designate himself or herself as a massage therapist or bodywork therapist or masseur or masseuse, or use or assume the title "massage therapist and bodywork therapist" or "massage therapist" or "bodywork therapist" or "masseur" or "masseuse" or any title that includes "massage therapist," "bodywork therapist," or "bodyworker," or append to the person's name the letters "M.T.," "R.M.T.," "L.M.T.," "C.M.T.," "B.T.," "B.W.," "L.B.W.," "R.B.W.," or "C.B.W.," or use any other title or designation that represents or may tend to represent that he or she is licensed under this chapter, unless the person is licensed under this chapter.

3. Pursuant to Wis. Admin. Code § MTBT 1.02(17), a "massage therapy extern or bodywork therapy extern" means a student currently enrolled in an approved massage therapy or bodywork therapy school or program. Respondent does not qualify as a massage therapy extern post-graduation.

4. The conduct described in the Findings of Fact constitutes the unlicensed practice of massage therapy or bodywork therapy, contrary to Wis. Stat. § 460.02.

SPECIAL ORDER

1. The attached Stipulation is accepted.

2. Unless and until Respondent is properly licensed as a massage therapist or bodywork therapist by the Wisconsin Massage Therapy and Bodywork Therapy Affiliated Credentialing Board (Board), Respondent is enjoined and prohibited from the practice of massage therapy and bodywork therapy in the state of Wisconsin.

3. Unless and until Respondent is properly licensed as a massage therapist or bodywork therapist by the Board, Respondent is enjoined and prohibited from providing massage therapy or bodywork therapy, designating herself as a massage therapist or bodywork therapist or masseur or masseuse, or using or assuming the title "massage therapist and bodywork therapist"

or "massage therapist" or "bodywork therapist" or "masseur" or "masseuse" or any title that includes "massage therapist," "bodywork therapist," or "bodyworker," or appending to her name the letters "M.T.," "R.M.T.," "L.M.T.," "C.M.T.," "B.T.," "B.W.," "L.B.W.," "R.B.W.," or "C.B.W.," or use any other title or designation that represents or may tend to represent that she is licensed under Wis. Stat. Ch. 460.

4. Respondent shall provide a copy of this Administrative Injunction to the Department's credentialing unit that is processing her license application.

5. Violation of this special order may result in a forfeiture of up to \$10,000 for each day of violation, pursuant to Wis. Stat. § 440.21(4)(a).

6. If the Department determines there is probable cause to believe Respondent has violated any terms of this Administrative Injunction, the Department may refer the violations to the appropriate prosecutorial unit for review for possible criminal charges.

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

Issued at Madison, Wisconsin, this 21st day of September, 2022.

By:



Aloysius Rohmeyer, Chief Counsel
On behalf of the Department

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF

ELAINA RIVERA,
RESPONDENT.

:
:
:
:

STIPULATION

ORDER 0008172

Division of Legal Services and Compliance Case No. 22 UNL 047

Respondent Elaina Rivera, and the Division of Legal Services and Compliance, Department of Safety and Professional Services, stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- the right to petition for rehearing; and
- all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Administrative Injunction by the Wisconsin Department of Safety and Professional Services (Department). The parties to the Stipulation consent to the entry of the attached Administrative Injunction without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Department's Administrative Injunction, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Department, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the

Stipulation is not accepted by the Department, the parties agree not to contend that the Department has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance may appear before the Department, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that the Department may have in connection with deliberations on the Stipulation.

7. Respondent is informed that should the Department adopt this Stipulation, the Department's Administrative Injunction is a public record and will be published in accordance with standard Department procedure.

8. Respondent is further informed that should the Department adopt this Stipulation, the Department's Administrative Injunction will be reported as required by the National Practitioner Databank (NPDB) Guidebook and as otherwise required by any licensure compact or any other state or federal law.

9. The Division of Legal Services and Compliance joins Respondent in recommending that the Department adopt this Stipulation and issue the attached Administrative Injunction.

Elaina Rivera, Respondent
Milwaukee, WI 53221

Date

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

Date

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance may appear before the Department, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that the Department may have in connection with deliberations on the Stipulation.

7. Respondent is informed that should the Department adopt this Stipulation, the Department's Administrative Injunction is a public record and will be published in accordance with standard Department procedure.

8. Respondent is further informed that should the Department adopt this Stipulation, the Department's Administrative Injunction will be reported as required by the National Practitioner Databank (NPDB) Guidebook and as otherwise required by any licensure compact or any other state or federal law.

9. The Division of Legal Services and Compliance joins Respondent in recommending that the Department adopt this Stipulation and issue the attached Administrative Injunction.



9/05/2022

Elaina Rivera, Respondent
Milwaukee, WI 53221

Date



9/6/2022

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

Date