

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE MASSAGE THERAPY AND BODYWORK THERAPY AFFILIATED
CREDENTIALING BOARD

IN THE MATTER OF APPLICATION FOR
RENEWAL OF A
MESSAGE THERAPIST OR BODYWORK
THERAPIST CREDENTIAL

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ORDER GRANTING
LIMITED LICENSE

DANA ZIMMERMAN,
APPLICANT.

ORDER 0008649

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

Dana Zimmerman
Naples, FL 34119

Wisconsin Massage Therapy and Bodywork Therapy Affiliated Credentialing Board
Department of Safety and Professional Services
4822 Madison Yards Way
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the resolution of this renewal application. The Wisconsin Massage Therapy and Bodywork Therapy Affiliated Credentialing Board (Board) adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Applicant Dana Zimmerman filed an application to renew Wisconsin Massage Therapist or Bodywork Therapist credential #12821-146.

2. Information received in the application process reflects that on or about May 29, 2022, Applicant was charged with the following offenses in Brown County Circuit Court Case No. 22-CF-907:

- A. *Physical Abuse of an Elder Person – Intentionally Cause Bodily Harm / Cause Great Bodily Harm* [w. Domestic Abuse Assessments and Use of a Dangerous Weapon modifier], a felony offense in violation of Wis. Stat. § 940.198(2)(c).

B. *Disorderly Conduct* [w. Domestic Abuse Assessments and Use of a Dangerous Weapon modifier], a misdemeanor offense in violation of Wis. Stat. § 947.01(1).

- i. Applicant was born in 1985 and the involved man was born in 1937. They were previously married, are now divorced, but remain friends and were living together at the time of the incident underlying the pending charges.
- ii. On May 29, 2022, Applicant attacked the man at their home, repeatedly striking him with a wooden walking stick, causing bleeding and injuries to the man's head, arm, and leg. The stick broke during the attack and the man told police "he feared that [Applicant] was going to kill him."
- iii. Applicant claims she had an adverse reaction to new medications which coincided with a relapse with alcohol caused by a recent traumatic event involving Applicant's father and brother. Applicant claims she had been sober for 8 years prior to this incident and claims renewed sobriety since it occurred.
- iv. Applicant underwent AODA and Domestic Violence evaluations while the charges were pending. Neither identified a condition requiring further evaluation or treatment, but both evaluators recommended continued sobriety from all substances, except medications taken as prescribed.

3. In resolution of the matter, Applicant consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 460.05 and is authorized to enter the attached Stipulation pursuant to Wis. Stat. §§ 15.08(5)(c) and 227.44(5).

2. Pursuant to Wis. Stat. §§ 111.335(1)(b) and (4)(a), the Board may deny or limit the renewal of a credential if the applicant is subject to a pending charge the circumstances of which substantially relate to the practice of massage therapy or bodywork therapy, and the charge is for either a violent offense against a child or an exempt offense, which is defined as a violation specified in Wis. Stat. ch. 940 or §§ 948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095.

3. A substantial relationship occurs where "the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed." *County of Milwaukee v. Labor & Indus. Review Comm'n*, 139 Wis. 2d 805,824 (1987). The crux of the inquiry is the circumstances which foster criminal activity, e.g. the

opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person. *Id.*

4. Applicant is subject to a pending felony charge the circumstances of which involve a violent assault with a clinical tool by someone in a position of trust upon a particularly vulnerable person. Massage therapists or bodywork therapists are entrusted to therapeutically touch people with their hands and clinical tools while the person is laying down, often nude under a towel. The practice inherently involves someone in a position of trust putting their hands and/or an object on a particularly vulnerable person. Therefore, Applicant's pending felony charge is substantially related to the practice of massage therapy or bodywork therapy.

5. Applicant's pending felony charge is pled as a violation of Wis. Stat. § 940.198(2)(c), which is a violation specified in Wis. Stat. ch. 940 and is therefore an exempt offense as defined by Wis. Stat. § 111.335(1m)(b)1.

6. The Board may therefore deny or limit the renewal of Massage Therapist or Bodywork Therapist credential #12821-146 because Applicant is subject to a pending charge for an exempt offense the circumstances of which substantially relate to the practice of massage therapy or bodywork therapy.

7. Pursuant to Wis. Stat. § 440.08(4), the Board may also deny the renewal of Massage Therapist or Bodywork Therapist credential #12821-146 to protect the public health, safety, or welfare.

8. By the conduct described in the Findings of Fact, Applicant is subject to limitations on her license pursuant to Wis. Stat. §§ 111.335(1)(b) and (4)(a), and 440.08(4).

ORDER

1. The attached Stipulation is accepted.
2. Limitations upon Applicant's Massage Therapist or Bodywork Therapist credential #12821-146 are necessary to ensure that she is fit and competent to practice as a Massage Therapist or Bodywork Therapist.
3. Applicant's ability to practice as a Massage Therapist or Bodywork Therapist in the state of Wisconsin, is LIMITED for a period of at least two (2) years as follows:
 - A. For a period of at least two (2) years from the date of this Order, Applicant shall comply with the following requirement relating to drug and alcohol monitoring:
 - i. Within thirty (30) days of the date of this Order, Applicant shall enroll and participate in a drug and alcohol monitoring program which is approved by the Department (Approved Program).

- ii. At the time Applicant enrolls in the Approved Program, Applicant shall review the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
 - a. Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - b. Production of a urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- iii. The Approved Program shall require the testing of specimens at a frequency of not less than forty-eight (48) times per year, one (1) of which may be a hair test at the Board's discretion, for at least the first year of this Order. Thereafter, the Board may adjust the frequency of testing on its own initiative at any time.
- iv. Applicant shall abstain from all personal use of alcohol.
- v. Applicant shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Applicant shall disclose Applicant's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Applicant shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Applicant's treatment with, and provide copies of treatment records to, the Board or its designee. Copies of these releases shall immediately be filed with the Department of Safety and Professional Services Monitor (Department Monitor).
- vi. Applicant shall report to the Department Monitor all prescription medications and drugs taken by Applicant. Reports must be received within twenty-four (24) hours of ingestion or administration of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Each time the prescription is filled or refilled, Applicant shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.
- vii. Applicant shall provide the Department Monitor with a list of over-the-counter medications and drugs that he may take from time to time. Over-the-counter medications and drugs that mask the consumption of

controlled substances or of alcohol, create false positive screening results, or interfere with Applicant's treatment and rehabilitation, shall not be taken unless ordered by a physician, in which case the drug must be reported as described in the paragraph 3.A.v.

viii. All positive test results are presumed valid and may result in automatic suspension of licensure by the Board or the Board's designee. Applicant must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.

ix. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Applicant shall promptly submit to additional tests or examinations as the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.

B. Applicant shall commit no new violations of law and shall report all law enforcement contacts leading to arrest, charge or conviction, including DWI/OWI and municipal/ordinance violations, to the Department Monitor within forty-eight (48) hours of any such event, including any convictions resulting from pending charges.

C. Applicant shall comply with all terms of sentencing terms upon conviction or other charge resolution agreement in Brown County Circuit Court Case No. 22-CF-907. Applicant shall immediately report any violation(s) of, or changes to, Applicant's sentencing terms or other charge resolution agreement to the Department Monitor within forty-eight (48) hours of any such event.

D. Applicant is responsible for compliance with all terms and conditions of this Order, including the timely submission of reports by others. Applicant shall promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order by Applicant.

4. Applicant may petition the Board to alter the limitations set forth above after one (1) year of successful compliance with the Order. Applicant may petition the Board for return to full, unrestricted licensure upon demonstration of continuous, successful compliance with the terms of the Order for at least two (2) years, including at least six hundred (600) hours of massage therapy or bodywork therapy practice each year. The Board may grant or deny any petition, in its discretion, or may modify this Order as it sees fit.

5. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Division of Legal Services and Compliance

Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817
DSPSMonitoring@wisconsin.gov

You may also submit this information online via DSPS Monitoring Case management System, here: <https://dpsmonitoring.wi.gov>

6. In the event Applicant violates any term of this Order, Applicant's license, or Applicant's right to renew her license, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing. The Board or its designee may terminate the suspension if provided with sufficient information that Applicant is in compliance with the Order and that it is appropriate for the suspension to be terminated. Whether to terminate the suspension shall be wholly in the discretion of the Board or its designee. The Board may, in addition and/or in the alternative refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

7. Applicant shall be responsible for all costs and expenses incurred in complying with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

8. This Order is effective on the date of its signing.

WISCONSIN MASSAGE THERAPY AND BODYWORK THERAPY AFFILIATED
CREDENTIALING BOARD

By: *Charisma Townsend /JK*
A Member of the Board

07/17/2023

Date

STATE OF WISCONSIN
BEFORE THE MASSAGE THERAPY AND BODYWORK THERAPY AFFILIATED
CREDENTIALING BOARD

IN THE MATTER OF APPLICATION FOR
RENEWAL OF A
MESSAGE THERAPIST OR BODYWORK
THERAPIST CREDENTIAL

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STIPULATION

DANA ZIMMERMAN,
APPLICANT.

ORDER 0008649

It is stipulated between Applicant Dana Zimmerman and the Wisconsin Massage Therapy and Bodywork Therapy Affiliated Credentialing Board (Board) as follows:

1. Applicant filed an application to renew Massage Therapist or Bodywork Therapist credential #12821-146.
2. Information received by the Board reflects a basis for denial of renewal of licensure.
3. Based upon the information of record, the Board agrees to issue, and Applicant agrees to accept, an Order renewing Massage Therapist or Bodywork Therapist credential #12821-146, subject to the terms and conditions set forth in the attached Order adopting the Stipulation.
4. Applicant understands that by signing this Stipulation, Applicant voluntarily and knowingly waives the following rights:
 - the right to request a hearing related to the denial of the application;
 - the right to confront and cross-examine the witnesses against Applicant;
 - the right to call witnesses on Applicant's behalf and to compel their attendance by subpoena;
 - the right to testify on Applicant'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 Applicant under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.
5. Applicant is aware of Applicant's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.

- Dana Zimmerman
Naples, FL 34119 (see FNI above)
License no. 12821-146

Charisma Townsend /JK

A Member of the Massage Therapy and
Bodywork Therapy Affiliated Credentialing Board
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

Date _____