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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 Wright, Tremell L.M.T., Respondent

FINAL DECISION AND ORDER

Order No. ORDER0008332

Division of Legal Services and Compliance Case No. 19 MAB 007

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 28th day of November, 2023.

A handwritten signature in cursive script that reads "Jaime Ehmer".

Member
Massage Therapy and Bodywork Therapy Affiliated
Credentialing Board



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

In the Matter of the Disciplinary Proceedings
Against Wright, Tremell L.M.T., Respondent

DHA Case No. SPS-23-0005
DLSC Case No. 19 MAB 007

PROPOSED DECISION AND ORDER GRANTING SUMMARY JUDGMENT

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

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Department of Safety and Professional Services, by
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PROCEDURAL HISTORY

On January 20, 2023, the Department of Safety and Professional Services, Division of Legal Services and Compliance (the Division), filed a formal Complaint against Respondent Tremell Wright alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Admin. Code § MTBT 5.02(2) based upon the Respondent's criminal conviction under Wis. Stat. § 940.225.

On February 28, 2023, the Division of Hearings and Appeals issued a Notice of Default and Order based upon the Respondent's failure to file an answer or to appear for a telephonic prehearing conference. It was subsequently discovered that the Notice of Prehearing Conference was not properly addressed to the Respondent. The Respondent further asserted that he had not received the Complaint. Therefore, the Notice of Default and Order was rescinded on March 15, 2023, and the Respondent was granted additional time to submit an Answer. Respondent filed an Answer to the Complaint on March 29, 2023. Following a telephonic prehearing conference

held on April 4, 2023, the Division filed a motion for summary judgment, with attached exhibits, on May 17, 2023. Respondent requested and was granted an extension to file his motion response, which was filed on August 6, 2023. The Division filed a reply brief on August 24, 2023.

UNDISPUTED FACTS

The undisputed material facts in this matter are as follows.

1. Respondent Tremell V. Wright, L.M.T. has been licensed in the State of Wisconsin to practice massage therapy and bodywork therapy (license number 11614-146) since December 30, 2011.

2. On May 13, 2019, Respondent was charged with ten (10) counts of 4th degree sexual assault, Class A misdemeanors, in violation of Wis. Stat. §§ 940.225(3m) and 939.51(3)(a), in Milwaukee County Case No. 2019CM000487. The criminal complaint alleged that the Respondent sexually assaulted multiple female patients while providing massage therapy. (Affidavit of Colleen L. Meloy, ¶ 3, Ex. A)

3. On January 23, 2020, the Respondent entered a no contest plea to and was found guilty of two counts of 4th degree sexual assault under Wis. Stat. § 940.225(3m). The respondent was sentenced on February 6, 2020, and a Judgment of Conviction was entered on February 7, 2020. (Meloy Aff., Ex. B)

4. On January 20, 2023, the Division filed a Complaint against the Respondent seeking revocation of the Respondent's massage therapy license and alleging unprofessional conduct under Wis. Admin. Code § MTBT 5.02(2) based upon the Respondent's conviction for sexual assault under Wis. Stat. § 940.225.

DISCUSSION

Summary judgment is appropriate when there is no material fact in dispute and the moving party is entitled to judgment as a matter of law. *Casper v. American Intern. South Ins. Co.*, 336 Wis. 2d 267, 800 N.W.2d 880 ¶ 32 (2011); *see also* Wis. Stat. § 802.08(2) and Wis. Admin. Code § HA 1.10(2). On a motion for summary judgment, the facts are construed in favor of the non-moving party. *DeHart v. Wis. Mut. Ins. Co.*, 302 Wis. 2d 564, ¶ 7, 734 N.W.2d 394.

The Wisconsin Supreme Court has set forth the methodology for deciding motions for summary judgment, and that methodology will be followed here. First, an examination of pleadings is completed to determine whether a claim for relief has been stated; if a claim for relief has been stated, inquiry then shifts to the moving party's affidavits or other proof to determine whether the moving party has made a prima facie case for summary judgment. *Butler v. Advanced Drainage Sys.*, 2006 WI 102, ¶18, 294 Wis. 2d 397, 717 N.W.2d 760; *See also, Voss v. City of Middleton*, 470 N.W.2d 625, 162 Wis. 2d 737 (1991). If the moving party has made a prima facie

case for summary judgment, then the opposing party's submissions are reviewed to determine whether material facts are in dispute or if no reasonable alternative inferences may be drawn sufficient to entitle the opposing party to trial. *Palisades Collection LLC v. Kalal*, 2010 WI App 38, ¶9, 324 Wis. 2d 180, 781 N.W.2d 503. "A material fact is such fact that would influence the outcome of the controversy." *Cent. Corp. v. Research Prods. Corp.*, 2004 WI 76, ¶19, 272 Wis. 2d 561, 681 N.W.2d 178.

The Division's complaint alleged a violation of Wis. Admin. Code § MTBT 5.02(2) for unprofessional conduct due to the Respondent having a criminal conviction for sexual assault under Wis. Stat. § 940.225. Section MTBT 5.02(2) of the Wisconsin Administrative Code defines "unprofessional conduct" to explicitly include "[b]eing convicted of an offense under... s. 940.225..." of the Wisconsin statutes. The Massage Therapy and Bodywork Therapy Affiliated Credentialing Board¹ (hereinafter "Credentialing Board") is not only authorized but mandated to revoke a license based upon a criminal conviction pursuant to Wisconsin Stat. § 460.14(2m), which states:

Subject to the rules promulgated under s. 440.03(1), the affiliated credentialing board shall revoke a license under this chapter if the license holder is convicted of any of the following:

(a) An offense under s. 940.225.....,

It is undisputed that the Respondent was convicted of sexual assault under Wis. Stat. § 940.225. In *Lee v. State Board of Dental Examiners*, 29 Wis. 2d 330, 334, 139 N.W.2d 61 (1966), the Wisconsin Supreme Court addressed whether a criminal conviction based upon a plea of no contest or *nolo contendere* may be used in an administrative licensing proceeding. In that case, the respondent argued that his criminal conviction could not be used in a license revocation case brought against him by the Board of Dental Examiners because it was based on a plea of *nolo contendere*.² *Lee*, 29 Wis. 2d at 333-334. In examining this issue, the court stated:

[A plea of *nolo contendere*] constitutes an implied confession of guilt for the purposes of the case to support a judgment of conviction and in that respect is equivalent to a plea of guilty (citation omitted). But the plea of *nolo contendere* differs from a plea of guilty in its collateral effects. Because a plea of guilty is an unqualified express admission by the defendant it may be used against him in a collateral or subsequent civil action; but a plea of *nolo contendere* is not such an admission against interest and may not be used in a subsequent or collateral civil action for that purpose.

¹ The Massage Therapy and Bodywork Therapy Affiliated Credential Board, created under Wis. Stat. § 15.406(6), is affiliated with the Medical Examining Board and has the authority granted under Chapter 460 of Wisconsin Statutes.

² In applying the analysis in *Lee*, Wisconsin courts have used the phrases "no contest" and "*nolo contendere*" interchangeably. See e.g., *State v. Robinson*, 249 Wis. 2d 553, 560 n.4, 638 N.W.2d 564 (2002); *State v. Black*, 242 Wis. 2d 126, 139, 624 N.W.2d 363 (2001).

Id. at 334.

However, the Supreme Court distinguished between an actual judgment of conviction and a plea of no contest, stating:

[T]his distinction in the pleas [between a guilty plea and a plea of *nolo contendere*] does not carry over to the conviction. A judgment of conviction based on a plea of *nolo contendere* is a conviction which contains all the consequences of a conviction based on a plea of guilty or a verdict of guilty. There is no difference in the nature, character or force of a judgment of conviction depending upon the nature of the underlying plea.

Id. at 335. Consequently, the analysis in *Lee* permits consideration of a judgment of conviction in an administrative proceeding, including disciplinary proceedings involving professional licensure. “[A] criminal conviction, whether based on a plea of no contest or upon a verdict of guilty, is generally not admissible in a subsequent civil action;” however, “where a statute, like that involved in *Lee* . . . provides its own evidentiary standards permitting use of a criminal conviction, the common law rule excluding criminal convictions is excepted, regardless of the underlying plea.” *In re Estate of Safran*, 102 Wis. 2d 79, 94, 97, 306 N.W.2d 27 (1981); see also, *State v. Willstead*, 248 Wis. 240, 21 N.W.2d 271 (1946) (authorizing revocation of medical license based upon evidence of conviction).

Wis. Stat. § 460.14(2m) provides that the Credentialing Board may rely upon evidence of a conviction for an offense under Wis. Stat. § 940.225 as conclusive proof to justify revocation of a license. The facts and circumstances underlying the criminal charge or the Respondent’s resulting plea are therefore immaterial because the statute mandates revocation based solely upon the existence of a judgment of conviction. Based upon the above, the Division has set forth a valid claim for relief and a prima facie case for summary judgment.

In his responsive brief, the Respondent asserts that the Division’s motion should be denied because a proper investigation was never commenced and no formal complaint filed under Wis. Stat. § 146.40(4r)(em). The Respondent also alleges that the procedures under Wis. Stat. § 440.03(1) and Wis. Admin. Code § SPS 2.035 for investigating complaints have not been followed. Section 146.40 of the Wisconsin Statutes is inapplicable to this matter. It involves instructional programming and reporting of client abuse under the authority of the Department of Health Services; and does not involve disciplinary proceedings by the Department of Safety and Professional Services. Further, the Respondent has not only failed to present any evidence to demonstrate that the Department failed to follow procedures under Wis. Stat. § 440.03 or Wis. Admin. Code § SPS 2.035 but has also failed to adequately explain how any such alleged failure prevents entry of summary judgment. Most importantly, the Respondent has failed to set forth any *material* facts in dispute.

The undisputed material facts establish that Respondent was convicted of sexual assault under Wis. Stat. § 940.225. A conviction under Wis. Stat. § 940.225 constitutes “unprofessional

conduct” under Wis. Admin. Code § MTBT 5.02(2). Pursuant to Wis. Stat. § 460.14(2m), the Credentialing Board is mandated to revoke the Respondent’s license based upon his conviction. Therefore, summary judgment is appropriate as a matter of law.

PROPOSED CONCLUSIONS OF LAW

1. The Massage Therapy and Bodywork Therapy Affiliated Credentialing Board has jurisdiction over this matter pursuant to Wis. Stat. §§ 15.406(6), 460.04, and 460.14.
2. Respondent’s conviction for sexual assault under Wis. Stat. § 940.225 constitutes “unprofessional conduct,” as set forth in Wis. Admin. Code § MTBT 5.02(2).
3. Pursuant to Wis. Stat. § 460.14(2m), the Massage Therapy and Bodywork Therapy Affiliated Credentialing Board is mandated to revoke the Respondent’s license based upon the Respondent’s conviction for an offense under Wis. Stat. § 940.225.
4. The Division of Hearings and Appeals has authority to preside over this matter pursuant to Wis. Stat. § 227.46(1) and Wis. Admin. Code § SPS 2.10(2).

PROPOSED ORDER

The Division’s motion for summary judgment is granted. The Massage Therapy and Bodywork Therapy Affiliated Credentialing Board is authorized to revoke the Respondent’s license under Wis. Stat. § 460.14(2m).

Dated at Madison, Wisconsin on September 21, 2023.

STATE OF WISCONSIN
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By: _____

Kristin P. Fredrick
Administrative Law Judge