

BEFORE THE IOWA BOARD OF MASSAGE THERAPY

IN THE MATTER OF:)	CASE NO. 11-017
)	DIA NO. 12MTB004
KAREN KING)	
License No. 00883)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

On March 7, 2012, the Iowa Board of Massage Therapy (Board) issued a Notice of Hearing and Statement of Charges to Karen King (Respondent) charging her with failing to meet the continuing education requirements for licensure. The hearing was held on June 5, 2012 at 9:15 a.m. before the following members of the Board: Mary Belieu, Public Member and Chairperson; Jill Ellsworth, LMT; Larry Dallenbach, LMT; Rhonda Reif, LMT; and Coy Clark, public member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Assistant Attorney General Meghan Gavin appeared for the state. Respondent received the Notice of the Hearing and Statement of Charges by restricted certified mail on March 13, 2012 but failed to appear for hearing. The hearing was open to the public and was recorded by a certified court reporter. The Board convened in closed session following the hearing to deliberate its decision. The administrative law judge was instructed to prepare the Board's written decision, in accordance with its deliberations.

THE RECORD

The record includes the testimony of Lalah McGowen and State Exhibits 1-7 (See Exhibit Index for description).

FINDINGS OF FACT

1. Respondent Karen King has been issued license number 00883 to practice massage therapy in the state of Iowa. Respondent's license is current and will expire on January 15, 2013. When Respondent last renewed her license on January 11, 2011, she was required to have completed twenty-four (24) hours of continuing education for the biennium from January 15, 2009 through January 16, 2011 and to have current certification in CPR. (Lalah McGowan testimony; 645 IAC 133.2; 131.8(3)"c")

2. Respondent's 2011 license renewal was randomly selected for post renewal continuing education audit. On June 2, 2011, Respondent was sent an audit notice asking her to submit documentation that she had completed the continuing education required for her 2011 license renewal. The documentation was due by July 2, 2011. (Lalah McGowan testimony; Exhibit 1)

3. On June 28, 2011, Respondent submitted the Post Renewal Audit Continuing Education Report Form and included her certificate of completion for a 50 contact hour course entitled "Advanced Application of Medical Massage" on November 30, 2010. However, Respondent did not submit any evidence of her current certification in CPR. (Lalah McGowan testimony; Exhibit 3)

4. On June 30, 2011, Respondent was sent a notice that her continuing education audit was incomplete because she failed to submit her current CPR certification. The notice directed Respondent to submit a copy of her current CPR card or certificate to the Board office by July 2, 2011. The notice warned Respondent that failure to submit the required information may result in a failed audit requiring disciplinary action. (Lalah McGowan testimony; Exhibit 4)

5. Respondent submitted her CPR certification on July 26, 2011, which was more than three weeks after the July 2nd deadline. Respondent submitted a CPR certification from the American Heart Association, which was effective for the period from April 12, 2010 to April 2012. (Lalah McGowan testimony; Exhibit 5)

6. On March 7, 2012, the Board charged Respondent with failing to meet the continuing education requirement within the time prescribed by law. Respondent was served with the Notice of Hearing and Statement of Charges by restricted certified mail on March 13, 2012. (Exhibits 6, 7)

CONCLUSIONS OF LAW

A person shall not engage in the practice of massage therapy unless the person has obtained a license from the Board.¹ Licensing boards are required to issue rules for continuing education requirements as a condition to license renewal.² The Board has established such rules at 645 IAC chapters 131 and 133. Iowa

¹ Iowa Code section 147.2(1)(2011).

² Iowa Code section 272C.2(1)(2011).

massage therapy licenses are renewed on a biennial basis.³ A licensee seeking renewal shall meet the continuing education requirements in rule 645-133.2 and shall submit evidence of current certification in CPR.⁴ A licensee in this state is required to complete a minimum of 24 hours of board-approved continuing education to renew the license.⁵

The Board is authorized to audit licensees to review their compliance with the continuing education requirements.⁶ Board rule specifies the information to be provided by the licensee for auditing purposes.⁷ The information to be provided includes, in part: a course description, course outline, names and qualifications of instructors/speakers, and method of presentation.⁸ For auditing purposes, all licensees must retain the required documentation for two years after the biennium has ended.⁹

The Board may impose any of the disciplinary sanctions provided in rule 645-134.3 when the board determines that the licensee failed to submit the biennial report of continuing education.¹⁰ The preponderance of the evidence established that Respondent failed to timely provide proof of her current CPR certification in response to the random audit of her continuing education. Although Respondent later provided proof that she had a current certification in CPR, she failed to provide this documentation in a timely manner. Therefore, Respondent failed to timely submit her biennial report of continuing education, when requested to do so by the Board, in violation 645 IAC 134.2(21).

DECISION AND ORDER

IT IS THEREFORE ORDERED that Respondent Karen King is hereby issued the following Citation and Warning: Respondent is CITED for her violation of 645 IAC 134.2(21) and is WARNED that future violations may result in further disciplinary action.

³ 645 IAC 131.8.

⁴ 645 IAC 131.8(3).

⁵ 645 IAC 133.2, 133.3.

⁶ 645 IAC 4.11

⁷ 645 IAC 4.11(2).

⁸ 645 IAC 4.11(2)"a."

⁹ 645 IAC 4.11(3).

¹⁰ 645 IAC 134.2(21).

IT IS FURTHER ORDERED that Respondent shall pay a civil penalty of \$75.00 within thirty (30) days of the issuance of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and \$55.00 for the court reporter fees. The total fees of \$130.00 shall be paid within thirty (30) days of issuance of this decision.

Dated this 17th day of July, 2012.



Mary Belieu, Chairperson
Iowa Board of Massage Therapy

Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties or an appeal of the decision on the merits is timely initiated. A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact attached to the motion. 645 IAC 11.21(3). The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 645 IAC 11.21(4).

Pursuant to Iowa Code section 17A.19(2011) and 645 IAC 11.29, any appeal to the district court from a decision in a contested case shall be taken within 30 days from the issuance of the decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 645 IAC 11.23.

cc: Assistant Attorney General Meghan Gavin