

BEFORE THE IOWA BOARD OF MASSAGE THERAPY

IN THE MATTER OF:)	CASE NO. 10-14
)	DIA NO. 11MTB001
TAMERA LEHMAN)	
License No. 03537)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

On March 15, 2011, the Iowa Board of Massage Therapy (Board) filed a Notice of Hearing and Statement of Charges against Tamera Lehman (Respondent) charging her with failing to meet the continuing education requirements for licensure. The hearing was held on June 7, 2011 at 10:20 a.m. before the following members of the Board: Doug Carlson, LMT, Chairperson; Jill Ellsworth, LMT; Larry Dallenbach, LMT; Bill Cameron; Mary Belieu, and Adam Schweers public members. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Assistant Attorney General Kris Ensign appeared for the state. Respondent received personal notice of the hearing but failed to appear. 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 McGowan and State Exhibits A-E (See Exhibit Index for description).

FINDINGS OF FACT

1. Respondent Tamera Lehman has been issued license number 03537 to practice massage therapy in the state of Iowa. Respondent's license is current and will expire on March 15, 2012. When Respondent last renewed her license, she was required to have completed twenty-four (24) hours of continuing education for the biennium from March 16, 2008 through March 15, 2010 and to have completed CPR certification. (Lalah McGowan testimony; Exhibit E)

2. Respondent's 2010 license renewal was subjected to a post renewal continuing education audit because she filed the renewal application during the 30-day grace period. Respondent was sent an audit notice asking her to submit documentation that she had completed the continuing education required for her 2010 license renewal. Respondent did not respond to the letter. On August 27, 2010, the Board sent Respondent a final audit notice by certified mail. The final audit notice required Respondent to submit documentation of her continuing education by September 11, 2010. Respondent was also sent a form that she could complete and submit if she wanted to voluntarily inactivate her license. Respondent did not reply to the certified letter. (Lalah McGowan testimony; Exhibit B)

3. Respondent was personally served with the Notice of Hearing and Statement of Charges on April 5, 2011. (Exhibit A)

4. On April 6, 2011, Respondent called the Board office and stated that she wanted to voluntarily inactivate her license. On April 8, 2011 and again on May 18, 2011, the Board sent certified letters to Respondent's home address. Both letters notified her that she failed to comply with the continuing education audit requirements and that her case had been referred to the Board. Both letters included the form that Respondent could complete and submit to voluntarily inactivate her license. Respondent did not claim either certified letter. Respondent has not submitted the form required to inactivate her license and she has not submitted any documentation of her continuing education. (Exhibits C, D; Lalah McGowan testimony)

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 massage therapy licenses are renewed on a biennial basis.³

¹ Iowa Code section 147.2(1)(2009).

² Iowa Code section 272C.2(1)(2009).

³ 645 IAC 131.8.

A licensee seeking renewal shall meet the continuing education requirements in rule 645-133.2 and 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 is authorized to revoke, suspend, or otherwise discipline a licensee for knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession.¹⁰ In addition, the Board may take formal disciplinary action for failure to cooperate with a board audit, for failure to meet the continuing education requirement for licensure, and for falsification of continuing education information.¹¹

The preponderance of the evidence established that Respondent renewed her massage therapy license during the grace period in March 2010. At that time, Respondent claimed that she had completed the required hours of continuing education for the March 16, 2008-March 15, 2010 biennium. Respondent failed to respond to the post renewal audit and has not provided any documentation of continuing education. The Board can only conclude that Respondent did not in fact complete the required continuing education. Respondent has failed to comply with the continuing education requirements for renewal of her license in 2010, in violation of Iowa Code sections 147.55(3), 272C.10(3) and 645 IAC 131.8(3), 133.2, and 133.3.

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 Iowa Code section 147.55(3)(2009).

¹¹ 645 IAC 4.13.

DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 03537, issued to Respondent Tamera Lehman, is hereby INDEFINITELY SUSPENDED, effectively immediately upon service of this Decision and Order.

IT IS FURTHER ORDERED that Respondent's license shall remain suspended at least until her current license expires on March 15, 2012.

IT IS FURTHER ORDERED that Respondent shall immediately return her license renewal card to the Board office.

IT IS FURTHER ORDERED that Respondent shall pay a civil penalty of \$250.00 within thirty (30) days of the issuance of this Decision and Order.

IT IS FURTHER ORDERED that Respondent's license may not be reinstated until she has:

- a) Filed a petition for reinstatement with the Board, pursuant to 645 IAC 11.31, and has demonstrated that the reason for the suspension no longer exists and that it is in the public interest for her license to be reinstated;
- b) Submitted verification of her completion of all continuing education required for reinstatement; and
- c) Fully paid the \$250 civil penalty and the hearing fees assessed in 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 \$68.75 for the court reporter fees. The total fees of \$143.75 shall be paid within thirty (30) days of receipt of this decision.

This Findings of Fact, Conclusions of Law, Decision and Order is approved by the Board June 29, 2011.