

BEFORE THE IOWA BOARD OF MASSAGE THERAPY

IN THE MATTER OF:)	CASE NO. 11-018
)	DIA NO. 12MTB007
JINGYIN BAI)	
License No. 005524)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

On June 5, 2012, the Iowa Board of Massage Therapy (Board) issued a Notice of Hearing and Statement of Charges to Jingyin Bai (Respondent) charging him with five counts of violating the Iowa Code and the Iowa Administrative Code. Count 1: Failure to report another licensee to the board for violations listed in these rules pursuant to Iowa Code 272C.9 and 645 IAC 11.21. Count 2: Knowingly aiding, assisting, procuring or advising a person to unlawfully practice as a massage therapist in violation of Iowa Code 147.55(9) and 645 IAC 134.2(23). Count 3: Permitting another person to use the licensee's license for any purpose in violation of Iowa Code 147.55(9) and 645 IAC 134.2(26). Count 4: Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license in violation of Iowa Code 147.55(9) and 645 IAC 134.2(27). Count 5: Committing unethical conduct in violation of Iowa Code 147.55(9) and 645 IAC 134.2(28).

The hearing was held on March 5, 2013, at 9:00 a.m. before the following members of the Board: Mary Belieu, Public Member and Chairperson; Larry Dallenbach, LMT; Adam Schweers, Public Member; and Coy Clark, Public Member. Jill Ellsworth, LMT, recused due to a conflict of interest. Administrative Law Judge Robert H. Wheeler assisted the Board in conducting the hearing. Assistant Attorney General Meghan Gavin appeared for the public interest.

Respondent failed to appear for hearing. Service of Notice of Hearing by certified mail was unclaimed. Attempted personal service failed when the Respondent could not be located. Notice of Hearing was served by publication in compliance with 645 IAC 11.6(1)(c) and Iowa Rules of Civil Procedure 1.310 and 1.313. An Affidavit of Publication entered the record without objection. The hearing was open to the public and was recorded by a certified court reporter.

Based upon the Respondent's failure to appear following proper service of process, the Board entered judgment by default pursuant to Iowa Code 17A.12 and 645 IAC 11.21(1). The allegations in the Notice of Hearing and Statement of Charges were deemed admitted. 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 Notice of Hearing and Statement of Charges and the Affidavit of Publication.

FINDINGS OF FACT

1. Respondent Jingyin Bai has been issued license number 005524 to practice massage therapy in the state of Iowa. Respondent's license is current and will expire on October 15, 2013.
2. Respondent is part owner of Hong Chinese Massage in Sioux City, Iowa.
3. On September 6, 2011, the Department of Inspections and Appeals opened an investigation concerning Hong Chinese Massage after the Board received several complaints. The complaints alleged that massage therapists working at Hong Chinese were unlicensed and gave erotic massages.
4. Several unannounced visits to Hong Chinese Massage by the Department of Inspections and Appeals and the Sioux City Police Department revealed unlicensed employees offering to perform massage services.
5. The only massage therapy licenses displayed at Hong Chinese Massage belonged to the Respondent and the co-owner.
6. An employee of the parlor was arrested for prostitution following an undercover operation by the Sioux City Police Department.
7. The parlor is advertised on several "adult" and "exotic" websites.

CONCLUSIONS OF LAW

The Board has jurisdiction and the authority to impose disciplinary sanctions pursuant to Iowa Code 147, 152C and 272C.

Based on the entry of default, the Board finds that the Respondent failed to report another licensee for violations listed in the rules as required by Iowa Code 272C.9 and 645 IAC 134.2(22). The Respondent knowingly aided, assisted, procured or advised an unlicensed person to unlawfully practice as a massage therapist in violation of Iowa Code 147.55(9) and 645 IAC 134.2(23). The Respondent permitted another person to use his license in violation of Iowa Code 147.55(9) and 645 IAC 134.2(26). The Respondent permitted an unlicensed employee or person under the licensee's control to perform activities requiring a license in violation of Iowa Code 147.55(9) and 645 IAC 134.2(27). The Respondent committed unethical conduct in violation of Iowa Code 147.55(9) and 645 IAC 134.2(28).

The Board considered the factors listed in 645 IAC 134.4, including the fact that the Respondent failed to cooperate with the disciplinary process. The Board also considered the methods of discipline authorized by 645 IAC 134.3.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the license of Respondent Jingyin Bai is hereby suspended indefinitely. The Respondent may not apply for re-licensure for a minimum period of 25 years. Any application for re-licensure shall include a description of remedial actions taken to insure prevention of any reoccurrence of the violations in this action.

IT IS FURTHER ORDERED that Respondent shall pay a civil penalty of \$1000.00 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 29th day of April, 2013.

A handwritten signature in cursive script that reads "Mary Belieu". The signature is written in black ink and is positioned above a horizontal line.

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