

BEFORE THE IOWA BOARD OF MASSAGE THERAPY

IN THE MATTER OF:)	CASE NO. 12-025
)	DIA NO. 13MTB001
BRUCE MORGAN)	
License No. 03616)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

On June 4, 2013, the Iowa Board of Massage Therapy (Board) filed a Notice of Hearing and Statement of Charges against Bruce Morgan (Respondent) charging him with failing to meet the continuing education requirements for licensure within the time prescribed by law. The hearing was held on September 3, 2013 at 9:00 a.m. before the following members of the Board: Jill Ellsworth, LMT, Chairperson; Rhonda Reif, LMT; Khrystyne Napolitano, LMT; and Coy Clark, public member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Assistant Attorney General Laura Cathelyn appeared for the state. Respondent appeared and was self-represented. The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1) and 645 IAC 11.19(10), 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 Respondent, State Exhibits 1-16 (See Exhibit Index for description), and Respondent Exhibits A-D.

FINDINGS OF FACT

Licensing and Disciplinary History

1. On May 7, 2004, Respondent Bruce Morgan was issued license number 03616 to practice massage therapy in the state of Iowa. (State Exhibit 8)
2. After renewing his license for the 2006-2008 biennium, Respondent was audited and was asked to submit documentation of the hours of continuing

education that he claimed on his 2008 license renewal application. After receiving a final audit notice, Respondent notified the Board that he in fact completed the continuing education credits after the end of the compliance period. On January 15, 2009, Respondent was issued a Letter of Warning, which notified him that he would be subject to another audit of his continuing education at the time of his next license renewal. (State Exhibits 3, 4)

3. Respondent's license renewal for the 2008-2010 biennium was then audited by the Board for compliance with the continuing education requirements. (State Exhibit 5) Respondent failed to submit verification of his continuing education hours in response to the audit notices. On February 16, 2011, Respondent and the Board entered into a Combined Statement of Charges, Informal Settlement Agreement, and Consent Order to address the failed audit. The Consent Order required Respondent to pay a \$250 civil penalty within thirty (30) days and to complete an additional three (3) hour continuing education course in ethics within six (6) months. (State Exhibit 6)

4. Respondent did not provide verification of his completion of three hours of continuing education in ethics within six months of the date of the Consent Order, and he failed to respond to several reminders sent by the Board. On February 9, 2012, the Board charged Respondent with failure to comply with a Board Order. A hearing was scheduled, but Respondent failed to appear. On March 29, 2012, the Board issued a Decision and Order indefinitely suspending Respondent's license until he submitted verification of completion of the three hour ethics course and paid a \$250 civil penalty and \$130 hearing fee.¹ (State Exhibits 7, 8)

The Current Violation

5. On May 17, 2012, Respondent renewed his license for the 2010-2012 biennium online and reported that he had completed the required hours of continuing education. (State Exhibit 9) The Board renewed Respondent's license at that time. (State Exhibits 1, 9, 13) Respondent was required to have completed twenty-four (24) hours of continuing education for the biennium from May 16, 2010 through May 15, 2012 and to have completed CPR certification. (See 645 IAC 133.2, 133.3(2)"b"(5))

¹ Respondent completed the Ethics Course on November 5, 2011, roughly three months after the deadline and three months before the disciplinary hearing, but he did not submit verification of his completion of the course until after the Board suspended his license. (State Exhibits 10, 16).

6. On June 18, 2012, Respondent was notified that he had been selected for a post renewal continuing education audit to verify that the continuing education he completed for his last license renewal (2010-2012) met the Board's standards and criteria. The documentation of continuing education was due in the Board office by July 18, 2012. Respondent failed to submit documentation of 24 hours of continuing education by this deadline. Respondent only submitted documentation of a total of 7 hours of continuing education. Six (6) of those hours were in Category A. (State Exhibits 10, 11, 13, 16).

7. The Board filed the pending Statement of Charges on June 4, 2013 and scheduled the disciplinary hearing for September 3, 2013. (State Exhibit 1) On August 28, 2013, Respondent submitted verification of an additional 15.5 hours of continuing education. Fourteen (14) of the hours were in Category A. (State Exhibit 14) At hearing, Respondent submitted his current CPR certification card, which shows that he completed a two year CPR course on March 8, 2012. (Respondent Exhibit B) Therefore, Respondent has now submitted proof of 24.5 hours of continuing education, including a CPR course. However, Respondent only completed the following 9 credits within the biennium licensing period of May 16, 2010-May 15, 2012:

- CPR certification, completed 3/8/12 (2 credits) (Respondent Exhibit B)
- Overcoming Paralysis With Movement and Massage, completed 3/17/12(1 credit)²
- The F.A.S.T. Release Method, completed 3/18/12, (6 credits-Category A)

(State Exhibits 10, 16) Respondent completed the following additional continuing education credits after he renewed his license on May 17, 2012:

- Essentials of Using the Forearm, completed 3/15/13 (1.5 credits);
- Medical Massage, completed 6/1/13-6/2/13 (14 credits-Category A)

If the Board allows Respondent to use these additional 15.5 credits as make-up credits, then Respondent will have now satisfied the continuing education requirement for the 2010-2012 biennium. (Respondent testimony; State Exhibit 14)

² This was a 6 credit Category B course, but Respondent used 5 of the 6 credits as make-up credits for the prior biennium (2008-2010). (State Exhibits 10, 16). Continuing education credits may only count towards one biennium.

8. Respondent is a self-employed massage therapist. He is the sole provider for his wife, who has serious health issues, and for his two children. Respondent reports that he has had to take a part-time job in order to pay bills and provide health insurance for his family because his massage therapy business did not provide sufficient income. Since 2010, Respondent has been employed as a Registration Representative by a hospital, and he works 35 hours during each two-week pay period. Respondent works some evenings and every other weekend (Saturday and Sunday) from 7:30 a.m. to 4:00 p.m. (Respondent Exhibits A, C, D)

Respondent testified that he failed to timely complete his continuing education for the 2010-2012 biennium because he could not afford the registration fees and because he had difficulty finding time to take continuing education when he was working at the hospital every other weekend. Respondent reported that his massage therapy business has become more lucrative after he started working with Groupon to offer discounts. Respondent's clients have reported a high level of satisfaction with the massage therapy services he has provided through Groupon. (Respondent testimony; Respondent Exhibit A)

Respondent also submitted verification that he has already paid for a 20 hour online, self-study continuing education course for the 2012-2014 biennium. (Respondent testimony; State Exhibit 15)

CONCLUSIONS OF LAW

A person shall not engage in the practice of massage therapy unless the person has obtained a license from the Board.³ Licensing boards are required to issue rules for continuing education requirements as a condition to license renewal.⁴ The Board has established such rules at 645 IAC chapters 131 and 133.

Iowa massage therapy licenses are renewed on a biennial basis.⁵ The biennial license renewal period begins on the sixteenth day of the licensee's anniversary month and ends on the fifteenth day of the anniversary month two years later. The licensee is responsible for renewing the license prior to its expiration.⁶

³ Iowa Code section 147.2(1)(2013).

⁴ Iowa Code section 272C.2(1)(2013).

⁵ 645 IAC 131.8.

⁶ 645 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.⁷ A licensee is required to complete a minimum of 24 hours of board-approved continuing education to renew the license.⁸ A minimum of 12 credits must be obtained in Category A. Category A is direct, hands on training attended personally by the licensee and related to the actual practice of massage/bodywork therapy.⁹

The Board is authorized to audit licensees to review their compliance with the continuing education requirements.¹⁰ When audited, licensees must provide an individual certificate of completion issued to the licensee or evidence of successful completion from the course sponsor. These documents must contain the course date, title, contact hours, sponsor, and licensee's name.¹¹ For auditing purposes, all licensees must retain the required documentation for two years after the biennium has ended.¹² If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through audit. The deadline for receipt of the documentation for this make-up credit is 90 days from the date of mailing of the notice of deficit to the address of record at the board office. The licensee shall be re-audited following the next renewal period when make-up credit has been accepted.¹³

The Board is authorized to revoke, suspend, or otherwise discipline a licensee for acts and offenses specified by Board rule.¹⁴ Board rules authorize disciplinary action for submission of a false report of continuing education or failure to submit the biennial report of continuing education.¹⁵

The preponderance of the evidence established that Respondent failed to timely comply with the continuing education requirements for the 2010-2012 biennium license renewal period, in violation of Code section 147.55(9) and 645 IAC 134.2(21). When Respondent renewed his license on May 17, 2012, he claimed

⁷ 645 IAC 131.8(3).

⁸ 645 IAC 133.2, 133.3.

⁹ 645 IAC 133.3(2)"a."

¹⁰ 645 IAC 4.11

¹¹ 645 IAC 4.11(1)"a."

¹² 645 IAC 4.11(2).

¹³ 645 IAC 4.11(3).

¹⁴ Iowa Code section 147.55(9)(2013).

¹⁵ 645 IAC 134.2(21).

that he had completed the 24 hours of continuing education required for renewal. As of May 17, 2012, however, Respondent had only completed 9 of the 24 credits required for his license renewal.

The Board is not unsympathetic to Respondent's personal difficulties, but many licensees have difficulty paying for continuing education courses and fitting the courses into their busy schedules. It is the licensee's responsibility to maintain sufficient organization and planning to ensure that the continuing education requirements are met in a timely manner, prior to license renewal. Nevertheless, the Board has decided to allow Respondent the opportunity to use the additional credits that he completed in March and June of 2013 as make-up credits for the 2010-2012 biennial licensing period. This will bring Respondent's continuing education up to date for his 2010-2012 license renewal. Respondent is warned however, that he is due to renew his license again in May 2014. Respondent should not expect the Board to allow him to use make-up credits in future license renewals.

For his current violation, Respondent will be required to complete an additional four (4) credits of continuing education in business and/or ethics. In addition, Respondent will be required to pay a civil penalty of \$150.00. The Board has mitigated the amount of the civil penalty that it would ordinarily impose for this repeat violation due to Respondent's financial and family situation.

DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 03616, issued to Respondent Bruce Morgan, is hereby placed on PROBATION, effectively immediately upon service of this Decision and Order. Respondent's probation shall continue until May 15, 2016 and shall be subject to the following terms and conditions:

- A. Respondent shall complete four (4) hours of continuing education in business and/or ethics within six (6) months of the issuance of this Decision and Order. These four credits may be completed in-person or online but they may not be used for future license renewal. Respondent shall submit the certificate(s) of completion for these credits to the Board office within one month of completing the course(s).
- B. Respondent shall fully and timely comply with all continuing education requirements required for license renewal. At the time he

submits his 2012-2014 license renewal and his 2014-2016 license renewal to the Board, Respondent must:

- submit a list to the Board of the continuing education courses that he completed during the relevant biennium period, separated by Category A and B;
- show the number of credits for each course and the total number of credits that he completed under each category; and
- attach a copy of all of his certificates of completion for the courses on the list.

IT IS FURTHER ORDERED that Respondent shall pay a civil penalty of \$150.00 within ninety (90) 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 ninety (90) days of receipt of this decision.

Dated this 3rd day of December, 2013.



Jill Ellsworth, LMT, Chairperson
Iowa Board of Massage Therapy

Pursuant to Iowa Code section 17A.19(2013) 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 Laura Cathelyn