

BEFORE THE IOWA BOARD OF MASSAGE THERAPY

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| IN THE MATTER OF: | ) | CASE NO. 10-015     |
|                   | ) | DIA NO. 12MTB001    |
| BRUCE MORGAN      | ) |                     |
| License No. 03616 | ) | FINDINGS OF FACT,   |
|                   | ) | CONCLUSIONS OF LAW, |
| Respondent        | ) | DECISION AND ORDER  |

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On February 9, 2012, 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 comply with the terms of a Board order or settlement agreement. The hearing was held on March 7, 2012 at 10:10 a.m. before the following members of the Board: Mary Belieu, Chairperson and public member; Jill Ellsworth, LMT; Larry Dallenbach, LMT; and Rhonda Reif, LMT. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Registered Law Student Intern Rachel Gillum and Assistant Attorney General Meghan Gavin appeared for the state. Respondent received notice of the hearing by restricted certified mail but failed to appear. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1), 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 Beth Jorgenson and State Exhibits 1-4 (See Exhibit Index for description).

FINDINGS OF FACT

1. On May 7, 2004, Respondent Bruce Morgan was issued license number 03616 to practice massage therapy in the state of Iowa. Respondent's license is current and will expire on May 15, 2012. (State Exhibit 3)
2. On February 16, 2011, Respondent and the Board entered into a Combined Statement of Charges, Informal Settlement Agreement, and Consent Order. The

Consent Order was based on Respondent's failure of a continuing education audit. The Consent Order required Respondent to pay a \$250 civil penalty within thirty (30) days and to complete a three (3) hour continuing education course in ethics. The continuing education course was required to be completed within six (6) months of the Board's approval of the Combined Statement of Charges, Informal Settlement, and Consent Order. The ethics course was required to be obtained in person and could not be used for license renewal. (Testimony of Beth Jorgenson; State Exhibit 3)

3. The Combined Statement of Charges, Informal Settlement, and Consent Order was served on Respondent by certified mail and was received by him on March 2, 2011. Respondent paid the \$250 civil penalty on March 11, 2011. (Testimony of Beth Jorgenson; State Exhibit 4)

Respondent did not provide verification of his completion of three hours of continuing education in ethics by the August 16, 2011 deadline. On September 20, 2011, Board staff sent Respondent a reminder that he needed to submit verification of three hours of continuing education in ethics. There was no response. On October 5, 2011, Board staff sent Respondent another reminder by restricted certified mail. On October 18, 2011, the Board received proof of service of the reminder on Respondent. Again there was no response. (Testimony of Beth Jorgenson; State Exhibit 4)

4. On February 9, 2012, the Board issued the Notice of Hearing and Statement of Charges against Respondent. The Notice of Hearing and Statement of Charges was sent to Respondent by restricted certified mail, return receipt requested. Respondent eventually signed for the certified mail receipt on February 24, 2012. Respondent did not request a continuance, and he failed to appear for hearing. (Testimony of Beth Jorgenson; State Exhibits 1, 2, 4)

## CONCLUSIONS OF LAW

### *I. Failure to Appear*

The Notice of Hearing and Statement of Charges may be served on a licensee by personal service; restricted certified mail return receipt requested; or publication.<sup>1</sup> If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no adjournment is

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<sup>1</sup> 645 IAC 11.6.

granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.<sup>2</sup> Respondent was properly served with the Notice of Hearing and Statement of Charges by restricted certified mail but failed to appear for hearing. The Board was authorized to proceed with the hearing in his absence.

## *II. Failure to Comply*

The Board is authorized to revoke, suspend, or otherwise discipline a licensee for failing to comply with the terms of a Board order or the terms of a settlement agreement or consent order.<sup>3</sup> The preponderance of the evidence established that Respondent failed to comply with the terms of the Combined Statement of Charges, Informal Settlement Agreement, and Consent Order, in violation of Iowa Code sections 147.55(9) and 645 134.2(19). Respondent paid the \$250 civil penalty but never provided verification of his completion of three hours of continuing education in ethics. Respondent has also failed to respond to the Board's reminders or to the Notice of Hearing and Statement of Charges. Respondent has been given ample opportunity to comply. Under the circumstances, the Board has little choice but to suspend Respondent's license

### DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 03616, issued to Respondent Bruce Morgan, is hereby INDEFINITELY SUSPENDED, effective immediately upon service of this Decision and Order.

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, 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 receipt of this decision.

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

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<sup>2</sup> 645 IAC 11.21(1).

<sup>3</sup> Iowa Code section 147.55(9)(2011); 645 IAC 134.2(19).

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

- a) Submitted verification of his completion of the three hours of continuing education in ethics required by the February 16, 2011 Consent Order; and
- b) Fully paid the \$250 civil penalty and the hearing fees assessed in this Decision and Order.

If Respondent allows his license to become inactive prior to reinstating it, he must also comply with the requirements for license reactivation, which are found at 645 IAC 131.14.

Dated this 29th day of March, 2012.



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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 and Registered Law Student  
Intern Rachel Gillum, Department of Justice