

BEFORE THE BOARD OF BEHAVIORAL HEALTH  
STATE OF MONTANA

IN THE MATTER OF CASE NO. 2017-BBH-NR-495 REGARDING:

THE PROPOSED DENIAL OF THE ) Case No. 253-2018  
APPLICATION FOR LICENSURE OF )  
BRIAN LESLIE FRUCHTMAN, )  
Applicant for Clinical Social Worker )  
license. )

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**ORDER GRANTING SUMMARY JUDGMENT AND FINDING DEFAULT**

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**I. INTRODUCTION**

On October 16, 2017, the Department filed its Motion for Summary Judgment. On October 17, 2017, the Hearing Officer issued a Notice and Order warning Fruchtman of the consequences of failing to respond to the motion and gave him until October 27, 2017 to do so. Fruchtman did not respond to the motion or to the order and has not filed any pre-hearing disclosures as required by the August 25, 2017 Scheduling Order.

Fruchtman's failure to respond to the Summary Judgment Motion entitles the Department to the Summary Judgment sought. The factual basis for the Department's motion is as follows.

**II. UNDISPUTED FACTS**

1. Applicant applied for licensure as a Montana Clinical Social Worker on or about April 24, 2017. Ex. Nos. 1, 2.

2. As part of his application, Applicant included information that he held licensure as a social worker in Minnesota, and that his Minnesota license had been subject to disciplinary action. Ex. No. 2. at 2.

3. Applicant was licensed as an Independent Social Worker (LISW) by the Minnesota Board of Social Work (Minnesota Board) on November 29, 2001. Ex. No. 1.

4. Applicant has renewed his Minnesota license, subject to the disciplinary practice restriction discussed below, and the Minnesota license has an expiration date of July 31, 2018. *Id.*

5. On May 15, 2015, the Minnesota Board accepted a Stipulation and Consent order signed by Applicant and the Minnesota Board's Compliance Panel, and incorporated the Stipulation and Consent Order into a Final Order taking disciplinary action against Applicant's Minnesota license. *Ex. No. 3.*

6. Applicant agreed the Stipulation and Consent Order was based on the following facts:

a. in October 2012, Applicant received a notification from an agency that he was not selected for employment following an interview;

b. subsequently, Applicant made multiple phone calls and left multiple messages for staff requesting feedback regarding his interview. The staff indicated they felt threatened by Applicant's phone calls and messages;

c. on September 9, 2013, Applicant pled guilty to petty misdemeanor disorderly conduct.

7. On his 2014 renewal application, Applicant disclosed a recent employment termination. The Board learned that Applicant had corrective action implemented and had been terminated from multiple social work positions. In addition, Applicant has mental health diagnoses. *Stipulation and Consent Order, May 15, 2015. Ex. No. 3.*

8. As a result of the Minnesota Final Order, Applicant's Minnesota license is suspended, but the suspension is stayed pending Applicant's participation in the Health Professionals Services Program (HPSP) for a minimum of three years. *Id.* at 3. Applicant may not return to unsupervised practice without the Minnesota Board's approval. *Id.* at 4. While the stayed suspension is in effect, Applicant is required to have ongoing mental health monitoring, an on-site monitor if he is practicing social work, and is required to comply with any recommendations for additional evaluations or treatment made by a mental health evaluator or mental health provider. *Id.* at 3. Applicant may not practice social work without an on-site monitor supervising his practice.

9. Applicant's disciplinary action in Minnesota will not be resolved until May 2018, at the earliest. *Id.*

10. Applicant subsequently applied for licensure in Montana.

### III. DISCUSSION

When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must — by affidavits or as otherwise provided in this rule — set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party. M.R.Civ.Pro. 56(e)(2).

Here, Fruchtman's failure to respond entitles the Department to summary judgment.

Title 37, Chapter 1, Part 3 governs the discipline of professions and occupations governed by Title 37, Montana Code Annotated.

Grounds for disciplinary action by a board allocated to the department of labor and industry against a holder of a license may be grounds for denial of a license to an applicant. Mont. Code Ann. § 37-1-137(1).

Mont. Code Ann. § 37-1-316 provides in pertinent part:

Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this part:

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied;

(11) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety.

Fruchtman's Minnesota disciplinary action and his admission of having a mental disability that renders him unable to practice the profession with reasonable

skill or safety provides a sufficient basis for the Board to deny his application for licensure in Montana.

Because Fruchtman has failed to participate in these proceedings beyond his appearance at the scheduling conference, he is in default. Mont. R. Civ. P. Rule 55.

#### IV. ORDER

IT IS THEREFORE ORDERED:

1. The Department's Motion for Summary Judgment is GRANTED.
2. The Applicant, Brian L. Fruchtman, is in Default.

DATED this 29th day of January, 2018.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ DAVID A. SCRIMM  
DAVID A. SCRIMM  
Hearing Officer