

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The  
State Of Wisconsin  
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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In the Matter of the Disciplinary Proceedings  
Against PAUL A. THOMPSON, Respondent

FINAL DECISION AND ORDER  
Order No. \_\_\_\_\_

**ORDER 0000954**

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Division of Enforcement Case No. 08 RSA 028

The State of Wisconsin, Department of Safety and Professional Services having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Safety and Professional Services.

The rights of a party aggrieved by this Decision to petition the department for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 15<sup>th</sup> day of July, 2011.

A handwritten signature in black ink, appearing to read 'Michael Berndt', written over a horizontal line.

Michael Berndt, General Counsel on behalf of  
the Department of Safety and Professional Services



Before The  
State Of Wisconsin  
**DIVISION OF HEARINGS AND APPEALS**

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In the Matter of the Disciplinary Proceedings Against  
**PAUL A. THOMPSON**, Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. DRL-10-0087

---

Division of Enforcement Case Number 08 RSA 028

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Paul A. Thompson  
P.O. Box 05263  
Milwaukee, WI 53205

Department of Regulation of Licensing,  
Division of Enforcement, by

Attorney James Polewski  
Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935

Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935

**PROCEDURAL HISTORY**

The Division of Enforcement (Division) filed a Complaint in this matter on November 12, 2010.

Respondent Thompson filed an Answer to this Complaint, (in the form of a letter), on or about December 18, 2010, admitting all allegations.

A prehearing conference was held by telephone on January 20, 2011, administrative law judge (ALJ) Amanda Tollefsen, presiding. Respondent Thompson did not make himself available for this prehearing conference. Because Respondent Thompson had filed an Answer, however, a hearing was scheduled for March 21, 2011, at the Department of Regulation and Licensing. Notice of this fact was sent to Respondent Thompson at his most recent address on record with the Department of Regulation and Licensing.

Nonetheless, Respondent Thompson failed to appear at the time and place set for the hearing. The Division presented a prima facie case, and moved for default against Respondent pursuant to Wis.

Admin. Code s. RL 2.14. ALJ Amanda Tollefsen granted the Division's motion and, based upon the pleadings and associated papers in this matter, makes the following:

**FINDINGS OF FACT**

1. Paul A. Thompson ("Respondent") was born on December 8, 1966, and is licensed as a Substance Abuse Counselor-in-Training in the state of Wisconsin, license number 14411-130, originally granted on March 20, 2006.

2. Respondent's most recent address on record with the Department of Regulation and Licensing is P.O. Box 05623, Milwaukee, WI 53205.

3. On July 24, 2008, Respondent was found guilty of possession of drug paraphernalia, a violation of Milwaukee municipal ordinance no. 106-36-3-a, and resisting/obstructing an officer, a violation of Milwaukee municipal ordinance no. 105-138-2.

4. Respondent had been on probation for a 2003 conviction for possession of cocaine with intent to deliver. One of the conditions of Respondent's probation was random drug testing. On July 3, 2008, and again on August 20, 2008, Respondent tested positive for cocaine during a random drug screening.

5. Respondent did not appear or make himself available for the hearing of this matter, notice of which had been mailed to the address he provided with his Answer to the Complaint.

**CONCLUSIONS OF LAW**

1. The Wisconsin Department of Regulation and Licensing has jurisdiction to act in this matter, pursuant to Wis. Stat. § 453.07(2).

2. Wis. Stat. § 440.03(1) provides that "the department [of Regulation and Licensing] may promulgate rules defining uniform procedures to be used by the department... and all examining boards and affiliated credentialing boards attached to the department or an examining board, for... conducting [disciplinary] hearings."

3. Pursuant Wis. Admin. Code § RL 2.14, "If the respondent ...fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence."

4. Respondent's failure to appear at the hearing on March 21, 2011, constitutes a default pursuant to Wis. Admin. Code s. RL 2.14.

5. By virtue of Respondent's default, it is appropriate to deem the allegations of the Complaint admitted, and issue a decision based on the Complaint and other evidence provided by the Division.

6. Pursuant to Wis. Stat. § 440.88(6), “The department [of Regulation and Licensing] may, after a hearing held in conformity with chapter 227, revoke, deny, suspend, or limit under this subchapter the certification of any substance abuse counselor, clinical supervisor, or prevention specialist or reprimand the substance abuse counselor, clinical supervisor, or prevention specialist, for... any unprofessional conduct, incompetence, or professional negligence.”

7. Pursuant to Wis. Admin. Code § RL 164.01(2), “unprofessional conduct” includes, but is not limited to: (b) Violating, or aiding and abetting a violation of, any law or rule substantially related to practice as a substance abuse professional.

8. Respondent’s conduct, as described in paragraph 3 of the Findings of Fact, above, constitutes unprofessional conduct because Respondent was convicted of a crime the circumstances of which substantially relate to the practice of a substance abuse professional, in violation of Wis. Admin Code § RL 164.01(2)(b), and is thus subject to discipline pursuant to Wis. Stat. § 440.88(6).

9. Respondent’s conduct, as described in paragraph 4 of the Findings of Fact, above, violated Wis. Stat. 961.41(3g)(c), a law substantially related to the practice of a registered substance abuse counselor, and therefore violated Wis. Admin. Code § RL 164.01(2)(b), subjecting him to discipline pursuant to Wis. Stat. s. 440.88(6).

## DISCUSSION

### Violations of Wisconsin Statute and Administrative Code

By defaulting, Respondent has conceded that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.14. As such, it is undisputed that while practicing as a substance abuse counselor in the summer of 2008, Respondent was (1) found guilty of possession of drug paraphernalia, and (2) tested positive for cocaine in court-mandated drug screens on two separate occasions. When one considers the responsibility a substance abuse counselor has to help his or her patients maintain sobriety (see Transcript from March 21, 2011 Proceeding, pp. 6-8), it is obvious that Respondent Thompson’s conduct in failing to maintain his own sobriety violates Wis. Admin. Code § RL 164.0192)(b). (*See supra*). Respondent is thus subject to discipline pursuant to Wis. Stat. § 440.99(6). The only question that remains is what kind of discipline is appropriate.

### Appropriate Discipline

As discipline for his above offenses, the Division recommends an indefinite suspension of Respondent Thompson’s credential, until such time as “he is able and willing to show an AODA assessment that shows he has returned to recovery status,” and has submitted a detailed “model” order of discipline for the administrative law judge’s consideration. (*See Tr. pp. 8-9, see also* Division’s Proposed Final Decision and Order). Unfortunately, the Division fails to address the three goals of discipline as discussed in *State v. Aldrich*, 71 Wis. 2d 206 (1976).

Nevertheless, the undersigned ALJ agrees that Respondent’s conduct warrants an indefinite suspension of his license until he can demonstrate that he can safely practice as a substance abuse counselor, and thus finds the Division’s proposed order for discipline appropriate.

Indeed, the purpose of discipline is to: (1) promote the rehabilitation of the licensee; (2) protect the public from other instances of misconduct; and (3) deter other licensees from engaging in similar

contact. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Respondent's conduct in (1) possessing drug paraphernalia, (2) resisting officers, and (3) testing positive for cocaine, evinces that he has not yet been rehabilitated, and thus still very much a danger to the vulnerable public he serves as a substance abuse counselor. Her inability to meaningfully participate in these proceedings only strengthens that concern. The relief requested by the Division is thus not only appropriate, but necessary to protect the public, from future instances of misconduct by the respondent.

#### Assessment of Costs

The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings. (Tr. 28:1 – 5).

In *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), the Chiropractic Examining Board found that:

The ALJ's recommendation and the ... Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder..., is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties
- 4) The respondents cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct;
- 7) Any other relevant circumstances.

The respondent, by nature of her being in default has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. To the contrary, her conduct is of a serious nature. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven (being none), or that certain factual findings were investigated and litigated that were unnecessary. Given the fact that the Department of Regulation and Licensing is a "program revenue," agency, whose operating costs are funded by the revenue received for licensees, fairness here dictates imposing the costs of disciplining the respondent upon the respondent and not fellow members of the chiropractic profession who have not engaged in such conduct."

For many of the same reasons as cited in the *Buenzli-Fritz* decision, Respondent Thompson should be assessed the full amount of recoverable costs. His alleged conduct is serious, there is no

argument that certain factual findings were investigated and litigated unnecessarily, (indeed, Respondent more or less admitted that all allegations in the Complaint were true), and given the program revenue nature of the Department of Regulation and Licensing, fairness again dictates imposing the costs of disciplining Respondent Thompson on Respondent Thompson, and not fellow members of the substance abuse counselor profession who have not engaged in such conduct. Payment of assessed costs will be necessary before Respondent's license can be reinstated pursuant to Wis. Stat. § 441.07(2). If the Board assesses costs against Respondent Thompson, the amount of these costs will be determined pursuant Wis. Admin. Code § RL 2.18.

### ORDER

IT IS ORDERED that the license previously granted to Respondent, Paul A. Thompson is SUSPENDED for an indefinite period.

IT IS FURTHER ORDERED, effective the date of this Order:

#### SUSPENSION

- A.1. The certificate of Paul A. Thompson to practice as a Substance Abuse Counselor-in-Training is SUSPENDED for an indefinite period.
- A.2. Respondent shall mail or physically deliver all indicia of licensure to the Department Monitor within 14 days of the effective date of this Order.
- A.3. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active practice as a substance abuse counselor-in-training for every year the suspension is stayed, the Secretary may grant a petition by the Respondent under paragraph D.4. for return of full licensure. At the Secretary's discretion, the 5-year period may be started anew for every substantial or repeated violation of any provision of Sections C or D of this Order.
- A.4. The Secretary may, on his own motion or at the request of the Department Monitor, grant full licensure at any time.

#### STAY OF SUSPENSION

- B.1. The suspension shall not be stayed immediately, but shall be stayed upon Respondent petitioning the Secretary and providing proof, which is determined by the Secretary or his designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three (3) consecutive months.
- B.2. The Secretary or his designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. Repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Secretary may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
  - (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or
  - (b) Actual notice to Respondent or Respondent's attorney.

- B.4. The Secretary or his designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Secretary or his designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. RL 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

#### CONDITIONS AND LIMITATIONS

##### Treatment Required

- C.1. Respondent shall enter into, and shall continue, in a drug and alcohol treatment at a treatment facility (Treater) acceptable to the Secretary or his designee. Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation, drug monitoring and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater by the Secretary or his designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater, but not less than once weekly for the first year of the stayed suspension. Therapy may end only upon a determination by the Secretary or his designee after receiving a petition for modification as required by D.4., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

##### Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Secretary, his designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all specimen screening results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

##### AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to Treater and the Department Monitor.

##### Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.



- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Secretary or his designee.
- C.10. Respondent shall abstain from all use of over-the-counter medications or other substances that may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation.
- C.11. Within 24 hours of ingestion or administration, Respondent shall report to Treater and the Department Monitor all medications and drugs, over-the-counter or prescription, taken by Respondent, shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs, and shall provide the Department Monitor with a copy of the prescription. If Respondent has not provided a release as required by C.9 above, within 24 hours of a request by Treater or the Secretary or his designee, Respondent shall provide releases in compliance with state and federal laws. The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Respondent's treatment with, and provide copies of treatment records to, the requester.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Adm. Code § RL 7.11 ("Approved Program"). A list of Approved Programs is available from the Department Monitor.
- C.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program – including any positive test for any controlled substance or alcohol - is a substantial violation of this Order. The requirements shall include:
  - (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
  - (b.) Production of a specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.14. The Approved Program shall require the testing of specimens at a frequency of not less than 48 times per year, for the first year of this Order. After the first year, the frequency may be reduced only upon a determination by the Secretary or his designee after receiving a petition for modification as required by D.4., below.
- C.15. The Department Monitor, Secretary or his designee shall determine the tests to be performed upon the specimens. If any specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Treater or the Secretary or his designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.16. In addition to any requirement of the Approved Program, the Secretary or his designee may require Respondent to do any or all of the following: (a) submit additional specimens, (b) submit specimens of blood, hair, breath, urine, fingernail, saliva, and any additional tissue or product of

the body, the collection of which does not require piercing the skin, (c) furnish any specimen in a directly witnessed manner.

C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.

C.18. The Approved Program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11.

Practice Limitations

C.19. Respondent shall not work as a substance abuse counselor-in-training in any capacity unless Respondent is in full compliance with the rehabilitation and treatment programs as specified and approved under this Order.

C.20. Respondent shall practice only under the direct supervision of a clinical substance abuse counselor or other licensed health care professional approved by the Secretary or his designee and only in a work setting pre-approved by the Secretary or his designee.

C.21. Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a substance abuse counselor-in-training or care giver or provides health care, currently or in the future.

C.22. It is Respondent's responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active practice of substance abuse counseling worked during that quarter.

C.23. Respondent shall report to the Department Monitor any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

MISCELLANEOUS

Department Monitor

D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor  
Wisconsin Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Ave.  
P.O. Box 8935  
Madison, WI 53708-8935  
Fax: (608) 266-2264  
Telephone: (608) 267-3817

Required Reporting by Respondent

D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent. Additionally, every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by Secretary

D.3. If the Secretary or his designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Secretary or his designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

D.4. Respondent may petition the Secretary for modification of the terms of this Order or termination, however no such petition for modification shall occur earlier than one year from the date of this Order, no such petition shall be made any earlier than three months from the date the Secretary has acted on the last such petition, and no such petition for termination shall occur other than in compliance with paragraph A.3. Any such petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

Costs of Compliance

D.5. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Costs of Proceeding

D.6. Respondent shall pay costs in an amount to be determined by the Department of Regulation and Licensing to the Department of Regulation and Licensing, within ninety (90) days of this Order. In the event Respondent fails to timely submit any payment of costs, the Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has paid the Costs in full, including any accrued interest.

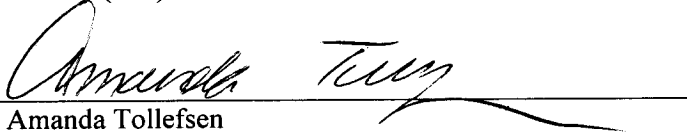
Additional Discipline

D.7. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 450.10.

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Paul A. Thompson.

Dated at Madison, Wisconsin on April 28, 2011.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By:   
Amanda Tollefsen  
Administrative Law Judge