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Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST ARMANDO
OROZCO, Respondent

FINAL DECISION AND ORDER
Order No. _____

ORDER 0001228

Division of Enforcement Case No. 08 RSA 042

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, make 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 the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 21st day of November, 2011.

A handwritten signature in black ink, appearing to read "Michael J. Bernett".

Michael J. Bernett, Chief Legal Counsel
Department of Safety and Professional Services



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

In the Matter of the Disciplinary Proceedings Against
ARMANDO OROZCO, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-11-0044

TO: Armando Orozco
1927 South 7th Street
Milwaukee, WI 53204

Attorney Aaron A. Konkol
Department of Safety and Professional Services
Division of Enforcement
PO Box 8935
Madison, WI 53708-8935

Division of Enforcement Case No. 08 RSA 042

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Armando Orozco
1927 South 7th Street
Milwaukee, WI 53204

Department of Safety and Professional Services, Division of Enforcement, by

Attorney Aaron Konkol
Department of Safety and Professional Services
Division of Enforcement
P. O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services (f/k/a Department of Regulation and Licensing), Division of Enforcement (the "Division") filed a formal Complaint against the Respondent, James Orozco. The Division filed said Complaint with the Division of Hearings and Appeals on May 10, 2011. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing to Respondent Orozco via both certified and regular mail at the address it believed to be his current address; Dodge Correctional Institution, Inmate #146260, P.O. Box 700, Waupun, WI 53963-0700. Upon being

notified, by DCI, that Respondent had been released, it further sent a copy of said documents via certified and regular mail to the following address: 1927 S. 7th Street, Milwaukee, WI 53204. (See Complainant's Motion for Discipline and Costs, filed June 28, 2011). The Notice of Hearing stated that Respondent Orozco was required to file a written Answer to the Complaint within 20 days, failing which "[he would] be found to be in default and a default judgment [could] be entered against [him] on the basis of the Complaint and other evidence and the Wisconsin Department of Regulation and Licensing [could] take disciplinary action against [him] and impose the costs of the investigation, prosecution and decision of this matter upon [him] without further notice or hearing."

The above documents were received by Respondent Orozco at the 1927 S. 7th Street address on or about May 18, 2011. To date, no Answer has been filed.

On or about May 25, 2011, the undersigned Administrative Law Judge (ALJ) of the Division of Hearings and Appeals issued a Notice of Telephone Prehearing Conference that set a telephone conference with Respondent Orozco and Attorney Aaron Konkol of the Division of Enforcement for June 21, 2011. This Notice instructed Respondent Orozco to contact the ALJ to provide the telephone number for which he could be reached for the June 21, 2011, telephone conference, and was sent to both addresses on file for Respondent Orozco, as provided above.

Respondent Orozco did not contact the ALJ with a telephone number that he could be reached at for the June 21, 2011, telephone conference. The telephone conference that was conducted on that date was thus without the respondent's participation, and Attorney Konkol made a motion for default pursuant to Wis. Admin. Code § RL 2.14. Upon Respondent's failure to file an Answer and failure to appear at the June 21, 2011, telephone conference, the ALJ granted Attorney Konkol's default motion and issued a Notice of Default instructing Respondent Orozco that he was in default, and that findings would be made and an Order entered on the basis of the Complaint and other evidence. The Notice of Default further ordered Attorney Konkol to provide the ALJ with the Division's written recommendations for discipline and the assessment of costs in this matter by July 7, 2011. It was mailed to Respondent Orozco at both addresses on record for him, again, as provided above. Attorney Konkol filed the Division's Motion for Discipline and Costs on or about June 28, 2011.

Respondent Orozco failed to respond to either the Notice of Default issued against him, or the written recommendations provided by Attorney Koplien on June 28, 2011.

This decision follows.

FINDINGS OF FACT

On the evidence presented, the undersigned ALJ makes the following findings of fact:

1. Armando Orozco, "Respondent," date of birth November 9, 1960, was certified by the Department of Safety and Professional Services (then known as the Department of Regulation and Licensing) as a Substance Abuse Counselor-in-Training in the state of Wisconsin, pursuant to certificate number 15335, which was first granted November 27, 2006.

2. Respondent has not renewed his certificate as a Substance Abuse Counselor-in-Training since it expired on February 28, 2009.

3. Respondent's current address is believed to be: 1927 S. 7th Street, Milwaukee, WI 53204. Dodge Correctional Institution, Inmate #146260, P.O. Box 700, Waupun, WI 53963-0700. (See above).

4. From June 27, 2005 to March 31, 2007, Respondent was employed as a Residential Case Manager at United Community Center (UCC) in Milwaukee, Wisconsin. UCC provides direct care or treatment services to clients, specifically: Medically Monitored Treatment Programs and Transitional Residential Programs. Respondent's duties included taking clients to court appointments, doctor and psychiatric appointments.

5. From January 29, 2007 to March 28, 2007, Ms. K was a client of UCC Latinas Unidas community based residential facility in the Alcohol and Other Drug Assessment (AODA) and treatment program. Respondent was Ms. K's case manager.

6. After a series of work-related errands in early March 2007, Respondent took Ms. K to his residence and engaged in sexual intercourse with Ms. K. The intercourse resulted in a pregnancy.

7. Medical records and DNA test results confirmed that Respondent is the father of Ms. K's baby, who was born on November 30, 2007.

8. On March 20, 2009, Respondent was convicted of 2nd Degree Sexual Assault-Treatment Facility Employee, a class C felony, because of his conduct with Ms. K.

9. Respondent's conviction of sexual assault of a client in a treatment facility is a conviction resulting from violation of a law substantially related to practice as a substance abuse professional.

10. As set out in the Procedural History above, a Complaint and Notice of Hearing were sent to Respondent Orozco at his most recent address on file with the Department of Safety and Professional Services on May 10, 2011. Said documents were also sent to Respondent at 1927 S. 7th Street, Milwaukee, WI 53204.

11. On or about May 25, 2011, the undersigned ALJ sent a Notice of Telephone Prehearing Conference for June 21, 2011, to Respondent Orozco at the above-listed addresses.

12. Respondent Orozco did not appear at this hearing, and the Division made a motion for default which was summarily accepted by the undersigned ALJ.

13. On or about June 21, 2011, the undersigned ALJ sent a Notice of Default to Respondent Orozco at his last known address.

14. Respondent Orozco has not responded to this Notice, or otherwise to the Complaint against him.

CONCLUSIONS OF LAW

1. The Department of Safety and Professional Services has jurisdiction over this matter pursuant to Wis. Stat. §§ 440.88(6)

2. Wisconsin Stat. § 440.03(1) provides that the department [of Safety and Professional Services] “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. These rules are codified in Wis. Admin. Code ch. RL.”

3. Wisconsin Administrative Code § RL 2.08(1) provides, in relevant part, that “[t]he complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent” and that “[s]ervice by mail is complete upon mailing.” Because the Complaint and Notice of Hearing, Notice of Telephone Prehearing Conference, and Notice of Default were mailed to Respondent Orozco at his last known address, he was duly served with these papers pursuant to Wis. Admin. Code § RL 2.08.

4. As the licensee, it was Respondent Orozco’s responsibility to keep his address on record with the Department of Safety and Professional Services current. Wis. Stat. § 440.11(1).

5. Respondent Orozco has defaulted in this proceeding pursuant Wis. Admin. Code § RL 2.14 by failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § RL 2.09.

6. Allegations in a complaint are deemed admitted when not denied in an answer. Wis. Admin. Code § RL 2.09. Respondent Orozco has admitted to the allegations of the Complaint by default by not filing an Answer.

7. Pursuant to Wis. Stat. § 440.88(6), the Department of Safety and Professional Services has authority to “revoke, deny, suspend, or limit under this subchapter the certification of any substance abuse counselor... or reprimand the substance abuse counselor... for ... any unprofessional conduct, incompetence, or professional negligence.”

8. Pursuant to Wis. Admin. Code § RL 164.01(2), “Unprofessional conduct comprises any practice or behavior that violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public. Misconduct or unprofessional conduct includes the following: (m) Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient.”

9. Wisconsin Admin. Code § RL 164.01(2)(b) further defines “unprofessional conduct” to include “Violating, or aiding and abetting a violation of, any law or rule substantially related to practice as a substance abuse professional..”

10. Respondent Orozco, by engaging in sexual contact with Ms. K while she was his client, has committed unprofessional conduct as defined by Wis. Admin. Code § RL 164.01(2)(m), and is thus subject to discipline pursuant to Wis. Stat. § 440.88(6).

11. Respondent Orozco, by being convicted of 2nd Degree Sexual Assault-Treatment Facility Employee as a result of his conduct with Ms. K, has violated a law substantially related to practice as a substance abuse counselor, has committed unprofessional conduct as defined by Wis. Admin. Code § RL 164.01(2)(b), and is thus subject to discipline pursuant to Wis. Stat. § 440.88(6).

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against him, Respondent Orozco has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that Respondent Orozco: (1) engaged in sexual intercourse with Ms. K while he was her AODA case manager¹; and (2) was convicted of 2nd Degree Sexual Assault-Treatment Facility Employee for this conduct. Such conduct clearly violates Wis. Admin. Code §§ RL 164.01(2)(m) and (b). (See Conclusions of Law, ¶¶ 10-11). Respondent Orozco is thus subject to discipline pursuant to Wis. Stat. § 440.88(6). The only question that remains is what kind of discipline is appropriate.

Appropriate Discipline

The Division requests that Respondent Orozco’s certification to practice as a substance abuse counselor, and his right to renew his certification be revoked:²

The Division of Enforcement has the responsibility to protect the citizens of Wisconsin by ensuring safe and competent practice of license professionals. Mr. Orozco’s conduct (i.e. 2nd degree sexual assault) demonstrates that he is neither safe nor competent to practice as a substance abuse counselor.

(Complainant’s Motion for Discipline and Costs, filed June 28, 2011).

¹ Indeed, said sexual intercourse resulted in a child of which Respondent was confirmed to be the father.

² Respondent Orozco’s certification expired on February 28, 2009. Per Wis. Stat. § 440.08(3)(a), however, he has the right to renew his expired license upon the payment of a fee for a period of five (5) years.

The undersigned ALJ agrees with the Division's logic, and finds that Orozco's conduct warrants the revocation of his right to renew his certification.

Indeed, the purpose of discipline is to: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar contact. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Respondent Orozco's conduct in having sexual intercourse with and impregnating an AODA client of his demonstrates that he has little concern for the health and/or safety of the public he serves. His failure to participate in these proceedings despite being given numerous opportunities only strengthens these concerns, and evinces that Respondent is far from rehabilitated. Finally, Respondent's abuse of position to effectuate his sexual desires is in grave conflict with the practice of substance abuse counseling, and must be deterred. 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. Since Respondent Orozco's license is expired, the only available discipline is to revoke his right to renew her license upon payment of a fee.

Costs

The Division requests that Respondent Orozco be ordered to pay the full costs of its investigation and of these proceedings.

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 Orozco should be assessed the full amount of recoverable costs. His alleged conduct is of a very serious nature, he did not participate in the proceedings against him, there is no argument that certain factual findings were investigated and litigated unnecessarily, and given the program revenue nature of the Department of Safety and Professional Services, fairness again dictates imposing the costs of disciplining Respondent Orozco on Respondent Orozco, and not fellow members of the substance abuse counseling profession who have not engaged in such conduct.

ORDER

For the reasons set forth above, IT IS ORDERED that the certification of Armando Orozco to practice as a substance abuse counselor in the state of Wisconsin, and his right to renew that license, per Wis. Stat. § 440.08(3)(a)³, upon the payment of a fee, be and are hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent Orozco shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. After the amount is established payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:


**Department Monitor
Department of Safety and Professional Services
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

³ Wis. Stat. § 440.08(3)(a) provides, in relevant part: "...[I]f the department does not receive an application to renew a credential before its renewal date, the holder of the credential may restore the credential by payment of the applicable renewal fee determined by the department under s. 440.03 (9) (a) and by payment of a late renewal fee of \$25.

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Armando Orozco.

Dated at Madison, Wisconsin on October 17, 2011.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: 
Amanda Tollefsen
Administrative Law Judge

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