

## 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 **LAVORIS JONES**, Respondent

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

**ORDER 0002075**

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Division of Enforcement Case No. 11 RSG 002

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 27th day of September, 2012.

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Michael J. Berndt  
Chief Legal Counsel  
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 **LAVORIS JONES**, Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. SPS-12-0035  
**ORDER 0002075**

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**Division of Enforcement Case No. 11 RSG 002**

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

Lavoris Jones  
612 12<sup>th</sup> St.  
Racine, WI 53403-1805

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

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

Michael J. Berndt  
Chief Legal Counsel  
Department of Safety and Professional Services  
P.O. Box 8935  
Madison, WI 53708-8935

**PROCEDURAL HISTORY**

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Enforcement (Division), filed a formal Notice of Hearing and Complaint against Respondent Lavoris Jones (Respondent), alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § § 440.26(6)(a) and 440.26(4m)(b) and Wis. Admin. Code § SPS (then RL) 35.01(2). Respondent failed to file an Answer to the Complaint, failed to provide a telephone number at which he could be reached for the telephonic prehearing conference held before the Division of Hearings and Appeals (DHA) on May 29,

2012 and failed to appear at the prehearing conference. As a result, the Division filed a Motion for Default Judgment and Supporting Memorandum, with attached exhibits, on June 11, 2012. The ALJ issued a Briefing Order on June 13, 2012, which established a due date of July 11, 2012 for Respondent to file a response to the Division's motion for default. Respondent failed to file a response.

## **FINDINGS OF FACT**

### **Facts Related to the Alleged Violation**

Findings of Fact 1-13 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent (DOB 07/13/1979) is licensed in the State of Wisconsin as a Private Security Person, having license number 108-32575, first issued on 12/29/2006, and current through 08/31/2012.

2. Respondent's most recent address on file with the Department is 1417 Johnston Place, Racine, WI 53404.

3. Respondent's private security person license expired on September 1, 2010.

4. On or about November 10, 2010, Respondent submitted a renewal application to the Department and answered "YES" to the following question:

HAVE YOU BEEN CONVICTED WITHIN THE PAST TWO YEARS  
OF A FELONY, A MISDEMEANOR OR A VIOLATION OF ANY  
STATE OR LOCAL LAW (OTHER THAN TRAFFIC) THAT IS  
PUNISHABLE BY A FORFEITURE, OR, ARE CHARGES PENDING?  
(If YES, provide information.)

5. Respondent did not provide any information pertaining to convictions or pending charges with his renewal application.

6. On or about November 11, 2010, the Department mailed Respondent a letter requesting that he provide information pertaining to any convictions or pending charges referenced in his renewal application.

7. On or about November 16, 2010, Respondent submitted a Report of Conviction form to the Department indicating that he had been convicted of one count of disorderly conduct and two counts of bail jumping.

8. On or about January 6, 2011, Respondent's private security person license was renewed and the matter was referred to the Division of Enforcement.

9. The Department subsequently opened Division of Enforcement case number 11 RSG 002 for investigation.

10. Court records obtained during the course of the Department's investigation revealed that on or about May 21, 2009, Respondent was charged with Battery, Disorderly Conduct, and four counts of Bail Jumping-Misdemeanor (Racine County Case Number 2009CM001356). The Battery and two counts of Bail Jumping-Misdemeanor charges were dismissed but read in. Respondent was convicted of the Disorderly Conduct and two counts of Bail Jumping-Misdemeanor charges on December 17, 2009 and was sentenced to one year of extended supervision.

11. Respondent failed to notify the Department of the convictions within 48 hours after the entry of the judgments of conviction.

12. Court records obtained during the course of the Department's investigation further revealed that on or about April 18, 2011, Respondent was charged with Possession of THC and was subsequently convicted on July 26, 2011 (Racine County Case Number 2011CM000890). Respondent was sentenced to 30 days local jail (imposed and stayed) and one year of extended supervision.

13. Respondent failed to notify the Department of the conviction within 48 hours after the entry of the judgment of conviction.

14. The Division's Exhibit 2, attached to its Motion for Default and Supporting Memorandum, is a copy of the Criminal Complaint and attached Incident Report from the Racine Police Department. According to the Incident Report, the victim, Respondent's wife, stated that she and Respondent became involved in a verbal argument during which Respondent became very upset and forcefully pushed her onto the bed and began to choke her with both of his hands, resulting in an injury to her left hand and her nose. According to the police report, Respondent's wife was bleeding from two fingers on her left hand and had a bloody nose. In addition, Respondent had fresh blood drops on his white t-shirt. The incident occurred in front of their daughter, who was four years old at the time.

#### **Facts Related to Default**

15. The Complaint and Notice of Hearing in this matter were served on Respondent on April 26, 2012, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing notified Respondent as follows: "If you do not provide a proper Answer within 20 days, you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Department may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

16. The Complaint and Notice of Hearing were sent to Respondent at two separate addresses: the Johnston Place address and 612 12<sup>th</sup> St, Racine, WI 53403. The Complaint and Notice sent by certified mail to the Johnston Place address were returned to the Department by the U.S. Postal Service, stamped "UNABLE TO FORWARD," and the Complaint and Notice

sent by certified mail to the 12<sup>th</sup> Street address were returned to the Department by the U.S. Postal Service indicating that three attempts were made to deliver the documents and that there was "NO SUCH NUMBER."

17. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

18. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for May 29, 2012. Notice of this prehearing conference was sent to Respondent at both the Johnston Place and 12<sup>th</sup> Street addresses, with instructions that Respondent provide the telephone number at which he could be reached for the conference to the ALJ no later than May 24, 2012. On May 16, 2012, DHA received a notice from the Department of Administration, DOA Distribution, indicating that Respondent's Johnston Place address had changed. The address printed on the returned envelope was the 12<sup>th</sup> Street address. The Notice sent to the 12<sup>th</sup> Street address was not returned to DHA.

19. Respondent failed to provide a telephone number and could not be reached for the prehearing conference.

20. Based on Respondent's failure to file an Answer to the Complaint and failure to provide a telephone number and make himself available for the prehearing conference in this matter, the Division filed a Motion for Default Judgment and Supporting Memorandum, with attached exhibits, on June 11, 2012, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

21. On June 13, 2012, the ALJ issued a Briefing Order which established a deadline of July 11, 2012 for Respondent to file a response to the Division's motion for default. The Briefing Order was sent to both the Johnston Place and 12<sup>th</sup> Street addresses. The Briefing Order sent to the 12<sup>th</sup> Street address was not returned. The Order sent to the Johnston Place address was returned to DHA on June 20, 2012, with Form 3547 from the U.S. Postal Service indicating that the 12<sup>th</sup> St. address was the new address for Respondent.

22. Respondent failed to file a response as required by the June 13, 2012 Briefing Order.

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Wis. Stat. § 440.26.

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 . . . for . . . conducting [disciplinary] hearings." These rules are codified in Wis. Admin. Code Ch. SPS.

3. Respondent was duly served with the Notice of Hearing and Complaint pursuant to Wis. Admin. Code § SPS 2.08 and was also served with the Notice of Telephone Prehearing Conference.

4. When a Respondent fails to file an Answer as required by Wis. Admin. Code § SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the Respondent is in default and findings may be made and an Order entered “on the basis of the complaint and other evidence.” Wis. Admin. Code § SPS 2.14.

5. Wisconsin Admin. Code § HA 1.07(3)(b) and (c) further provide: “(b) If a respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate . . .” and “(c) For a telephone or video hearing or prehearing the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: (1) The failure to provide a telephone number to the division after it had been requested; (2) the failure to answer the telephone or videoconference line.”

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

7. Respondent has also defaulted in this proceeding by failing to provide a telephone number at which he could be reached and by failing to appear at the scheduled prehearing conference after due notice, pursuant to Wis. Admin. Code § HA 1.07(3) and Wis. Admin. Code § SPS 2.14.

8. Pursuant to Wis. Admin. Code §§ SPS 2.09(3) and 2.14, and Wis. Admin. Code § HA 1.07(3)(b) and (c), Respondent has admitted to the allegations of the Complaint and other evidence by not filing an Answer and by failing to appear at the telephone prehearing conference and failing to provide a telephone number at which he could be reached.

9. Respondent engaged in conduct reflecting adversely on his professional qualification in violation of Wis. Stat. § 440.26(6)(a)(2) and Wis. Admin. Code § SPS (then RL) 35.01(2) by violating a law, the circumstances of which substantially relate to the practice of a private security person.

10. Respondent violated Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS (then RL) 35.01(2) by failing to report his convictions to the Department within 48 hours of the judgments of conviction.

11. As a result of the violations noted above, Respondent is subject to discipline pursuant to Wis. Stat. § 440.26(6)(a) and Wis. Admin. Code § SPS 35.01.

## **DISCUSSION**

### **Violations of Wisconsin Statutes and Administrative Code**

Because Respondent failed to provide an Answer to the Complaint filed against him and failed to appear at the May 29, 2012 prehearing conference or provide a telephone number at

which he could be reached, findings may be made and an Order entered “on the basis of the complaint and other evidence.” Wis. Admin. Code § SPS 2.14. Wisconsin Admin. Code § HA 1.07(3)(b) and (c) further provide: “(b) If a respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate.”

The facts alleged in the Complaint establish that Respondent failed to report his convictions from 2009 and 2011 within 48 hours of the judgments of conviction. Such failure constitutes a violation of Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS (then RL) 35.01(2). Wis. Stat. § 440.26(4m)(b) requires the holder of a license convicted of a felony or misdemeanor to “notify the department in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction . . .” Likewise, Wis. Admin. Code § SPS (then RL) 35.01 requires a credential holder convicted of a felony, misdemeanor or ordinance violation to “send to the department within 48 hours after the judgment of conviction or the judgment finding that the person committed the violation, a copy of the complaint or other information which describes the nature of the crime or conviction and the judgment of conviction. . .”

In addition, Wis. Stat. § 440.26(6)(a)(2) states that “the department may reprimand the holder of a license or permit issued under this section or revoke, suspend or limit the license or permit of any person who has . . . 2. Engaged in conduct reflecting adversely on his or her professional qualification.” Wisconsin Code § SPS (then RL) 35.01 also states that “[t]he department may deny an application for renewal, limit, suspend or revoke a credential, or reprimand a credential holder upon proof that the credential holder . . . has engaged in conduct reflecting adversely on professional qualification.” That provision delineates certain activity which “constitutes conduct reflecting adversely on professional qualification,” and includes: “[v]iolating, or aiding or abetting the violation of, any law the circumstances of which substantially relate to the practice of a private detective or private security person.” Wis. Admin. Code § SPS 35.01(2).

The Complaint establishes that on or about May 21, 2009, Respondent was charged with Battery, Disorderly Conduct, and four counts of Bail Jumping-Misdemeanor. The Battery and two counts of Bail Jumping-Misdemeanor charges were dismissed but read in. Respondent was convicted of the Disorderly Conduct and two counts of Bail Jumping-Misdemeanor charges on December 17, 2009. The Division’s Exhibit 2 establishes that the circumstances of the 2009 convictions included quite violent behavior against his wife, which Respondent committed in front of their four year-old child. The Complaint also establishes that on July 26, 2011, Respondent was convicted of Possession of THC.

The Department has found convictions for engaging in violent conduct against others and possessing illegal drugs to be substantially related to the practice of private security person for the purpose of imposing discipline. *See In the Matter of Disciplinary Proceedings Against Jamil James Locker*, LS0001392RSG (February 27, 2012) (conviction for Battery reduced from a charge of Felony Child Abuse); *In the Matter of Disciplinary Proceedings Against Daniel J. Eichstaedt*, LS0001453RSG (March 30, 2012) (conviction for Battery reduced from a charge of Child Abuse-Intentionally Cause Harm); *In the Matter of Disciplinary Proceedings Against Charles V. Hargrove*, LS000153RSG (May 9, 2012) (conviction for Possession of THC).



Based on the facts of this case and the Department's prior decisions, I conclude that the circumstances of Respondent's convictions substantially relate to the practice of a private security person and that therefore Respondent engaged in conduct adversely on his professional qualification in violation of Wis. Stat. § 440.26(6)(a)(2) and Wis. Admin. Code § SPS 35.01(2). He is therefore subject to discipline pursuant to these provisions.

### **Appropriate Discipline**

The three purposes of discipline are: (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 conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent's license be suspended for a period of 15 days and that his license be limited to require successful completion of all the terms of the extended supervision ordered by the Racine County Circuit Court in Racine County Case Numbers 2009CM001356 and 2011CM000890. This recommended discipline is consistent with the purposes of discipline articulated in *Aldrich* and also with the discipline imposed by the Department in prior cases. In *Locker*, the Department ordered a 15-day suspension of a private security person for a battery conviction and also limited his license to require successful completion of probation. In *Eichstaedt*, the Department ordered a suspension of a private security person's license for thirty days and limited his license to require successful completion of probation. In *In the Matter of Disciplinary Proceedings Against Larry A. Russell*, LS0001469RSG (April 4, 2012), the Department ordered a 15-day suspension of a private security person license for a disorderly conduct conviction involving impersonation of a police officer. In light of the facts of this case and DHA's practice of complying with the prior decisions of the Department, the discipline recommended by the Division is warranted here.

### **Costs**

The Division requests that Respondent 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 stated:

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 respondent's cooperation with the disciplinary process;
5. Prior discipline, if any;

6. The fact that the Department of [Safety and Professional Services] 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 [Safety and Professional Services] 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 delineated in the *Buenzli-Fritz* decision, Respondent should be assessed the full amount of recoverable costs. The alleged conduct, involving violence and drug use, is of a serious nature; Respondent did not participate in these proceedings; 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 dictates imposing the costs of these disciplinary proceedings on Respondent, and not on fellow members of his profession who have not engaged in such conduct.

If the Department assesses costs against Respondent, the amounts of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.

### **ORDER**

Accordingly, IT IS ORDERED that Respondent Lavis Jones’ license is hereby SUSPENDED for a period of 15 days, pursuant to § 440.26(6) and Wis. Admin. Code § SPS 35.01, effective the date the final decision is signed by the Department, and that Respondent’s license is LIMITED as follows:

1. Respondent shall successfully complete all of the terms of the extended supervision ordered by the Racine County Circuit Court in Racine County Case Numbers 2009CM001356 and 2011CM000890.

2. Respondent shall submit proof of completion of the terms of the extended supervision in the form of verification from the Racine County Circuit Court to the Department Monitor at the address stated below.

3. This Limitation shall be removed from Respondent's license after he has satisfied the Department or its designee that he has successfully completed the ordered extended supervision.

4. In the event Respondent fails to successfully complete the terms of the extended supervision, Respondent's license may, in the discretion of the Department or its designee, be REVOKED, without further notice or hearing.


IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 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**

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

Dated at Madison, Wisconsin on August 29, 2012.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
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By:   
Jennifer E. Nashold  
Administrative Law Judge

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