

## 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 **DANIEL L. BUETTNER**, Respondent

FINAL DECISION AND ORDER

Order No. \_\_\_\_\_

**ORDER 0002091**

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Division of Enforcement Case No. 11 RSG 017

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 16<sup>th</sup> day of October, 2012.

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 **DANIEL L. BUETTNER**, Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. SPS-12-0036

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**Division of Enforcement Case No. 11 RSG 017**

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

Daniel Buettner  
N88W14822 Main St., Apt. #A16  
Menomonee Falls, WI 53051-3275

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 Daniel Buettner (Respondent), alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. §§ 440.26(1)(a)2, 440.26(4m)(b), 440.26(6)(a), and Wis. Admin. Code §§ SPS (then RL)<sup>1</sup> 35.01(2), 35.01(17), 35.01(19), and

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<sup>1</sup> This decision will use the current "SPS" designation rather than the former "RL," although at the time of the alleged violations, the administrative code used the designation "RL."

35.01(23). 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 June 7, 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 19, 2012. The administrative law judge (ALJ) issued a Briefing Order on June 13, 2012, which established a due date of July 18, 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 1-11 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Daniel L. Buettner (DOB 10/07/1981) is licensed in the State of Wisconsin as a Private Security Person, having license number 108-25215, first issued on 01/06/2004, and current through 08/31/2012.

2. Respondent's most recent address on file with the Department is 3705 27<sup>th</sup> Lot #22, Kenosha, WI 53144.

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

4. On or about March 2, 2011, Respondent submitted a renewal application to the Department and answered "NO" 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. A Criminal Information Bureau check by the Department revealed a conviction for Respondent within the two years preceding March 2, 2011.

6. On or about April 7, 2011, Respondent's private security person license was renewed and the matter was referred to the Division of Enforcement.

7. The Department subsequently opened Division of Enforcement case number 11 RSG 017 for investigation.

8. Court records obtained during the course of the Department's investigation revealed that on or about May 28, 2009, Respondent was charged with disorderly conduct with a domestic

abuse enhancer (Kenosha County Case Number 2009CM000918) and was subsequently convicted on August 27, 2009. Respondent was sentenced to pay costs and a forfeiture.

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

10. The Department's investigation further revealed that Respondent worked as a private security person during the time his license was expired, from September 1, 2010 until it was renewed on April 7, 2011.

11. On January 6, 2012, a Department investigator sent Respondent a letter requesting information by January 23, 2012. As of May 1, 2012, the Department had not received a response from Respondent.

12. The Division's Exhibit 2, attached to its Motion for Default and Supporting Memorandum, is a copy of the criminal complaint filed in the Kenosha County criminal case. According to the criminal complaint, the victim, Respondent's girlfriend, reported that Respondent pushed her down, choked her, and told her he wanted to kill her, her family and her babies. According to the criminal complaint, Respondent disputed the victim's version of events; however, as the Division's Exhibit 1 confirms, he was nonetheless found guilty of disorderly conduct with a domestic abuse enhancer.

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

13. The Complaint and Notice of Hearing in this matter were served on Respondent on May 1, 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."

14. The Complaint and Notice of Hearing were sent to Respondent at two separate addresses: the 27<sup>th</sup> Lot address noted in finding of fact no. 2, and 6830 55<sup>th</sup> St., Kenosha, WI 53144. The Complaint and Notice sent by certified mail to both of these addresses were returned to the Department by the U.S. Postal Service, stamped "UNCLAIMED – 15 DAY RETENTION PERIOD HAS ELAPSED."

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

16. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for June 7, 2012. Notice of this prehearing conference was sent to Respondent at both the 27<sup>th</sup> Lot and 55<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 June 4, 2012. The Notice informed Respondent: **"A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent."** On May 31, 2012, the Notice sent to the 55<sup>th</sup> Street address was

returned to DHA by the U.S. Postal Service, stamped, "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD."

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

18. 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 18, 2012, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

19. On June 19, 2012, the ALJ issued a Briefing Order which established a deadline of July 18, 2012 for Respondent to file a response to the Division's motion for default. The Briefing Order was sent to both the 27<sup>th</sup> Lot and 55<sup>th</sup> Street addresses. The Briefing Order sent to the 27<sup>th</sup> Lot address was returned to DHA by the U.S. Postal Service on June 21, 2012, with a new address of N88W14822 Main St., Apt. A16, Menomonee Falls, WI 53051-3275. The Order was resent to that address and was not returned. The Order sent to the 55<sup>th</sup> Street address was returned by the U.S. Postal Service, stamped "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD."

20. Respondent failed to file a response as required by the June 19, 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 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(1)(a)2. by acting as a private security person without a license or permit issued under Wis. Stat. § 440.26.

11. Respondent engaged in unprofessional conduct under Wis. Admin. Code § 35.01(19) by practicing without a current credential.

12. Respondent violated Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS 35.01(2) by failing to report his 2009 conviction to the Department within 48 hours of the judgment of conviction.

13. Respondent engaged in unprofessional conduct under Wis. Admin. Code § SPS 35.01(17) by providing false information in the application for a credential.

14. Respondent engaged in unprofessional conduct under Wis. Admin. Code § SPS 35.01(23) by failing to cooperate in a timely manner with the Department's investigation of a complaint filed against the credential holder after a request by the department.

15. 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 June 7, 2012 prehearing conference or provide a telephone number at which he could be reached for the conference, 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 undisputed facts establish the following violations. First, as set forth above in findings of fact 3, 6 and 10, Respondent worked as a private security person during the time his license was expired, from September 1, 2010 until it was renewed on April 7, 2011. This constitutes a violation of Wis. Stat. § 440.26(1)(a)2, which states that no person may act as a private security person “unless he or she has a license or permit issued under [Wis. Stat. § 440.26].” It also constitutes unprofessional conduct under Wis. Admin. Code § 35.01(19) which includes “[p]racticing without a current credential.”

Second, findings of fact 4-5 and 8-9 establish that Respondent failed to report his 2009 conviction within 48 hours of the judgment of conviction. Such failure constitutes a violation of Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS 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 35.01(2) 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. . . .”

Third, findings of fact 4-5 and 8 and the Division’s Exhibits 1 and 2 establish that Respondent engaged in unprofessional conduct under Wis. Admin. Code § SPS 35.01(17) in that Respondent “[p]rovid[ed] false information in the application for a credential.”

Fourth, finding of fact 8 and the Division’s Exhibits 1 and 2 establish that Respondent’s 2009 conviction for disorderly conduct with a domestic abuse enhancer constitutes a violation of Wis. Stat. § 440.26(6)(a)2 and Wis. Admin. Code § SPS 35.01(2). Wis. Stat. § 440.26(6)(a)2 provides, in relevant part 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 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).

Court records obtained during the course of the Department’s investigation revealed that Respondent was convicted on August 27, 2009 of disorderly conduct with a domestic abuse enhancer in Kenosha County Case Number 2009CM000918, for which he was sentenced to pay costs and a forfeiture. The Division’s Exhibit 2 establishes that the circumstances of the 2009 conviction included quite violent behavior against his girlfriend, with Respondent pushing his girlfriend down, choking her, and telling her he wanted to kill her, her family and her babies.

The Department has found convictions for disorderly conduct and engaging in violent conduct against others 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 Larry A. Russell*, LS0001469RSG (April 4, 2012) (conviction for disorderly conduct for impersonating a peace officer); *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).

The facts of this case and the Department’s prior decisions establish 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).

In addition, Respondent engaged in unprofessional conduct under Wis. Admin. Code § SPS 35.01(23), which defines unprofessional conduct to include “failing to cooperate in a timely manner with the department’s investigation of a complaint filed against the credential holder” “after a request by the department.” Finding of fact 11 establishes that on January 6, 2012, a Department investigator sent Respondent a letter requesting information by January 23, 2012. According to the Complaint, as of May 1, 2012, the Department had not received a response from Respondent. In its brief in support of its default motion, the Division states that as of the date of its brief, June 15, 2012, the Department had not received the information requested.

### **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. 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, failure to report the conviction, and providing false information on an application for a credential. In *Eichstaedt*, the Department ordered a 30-day suspension of a private security person’s license for a battery conviction, failure to report the conviction, and failure to cooperate

with the Department's investigation. In *Russell*, the Department ordered a 15-day suspension of a private security person license for a disorderly conduct conviction, failure to report the conviction, and providing false information on an application for a credential. 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.

### 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, 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 amount of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.

### **ORDER**

Accordingly, IT IS ORDERED that Respondent Daniel Buettner's 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.

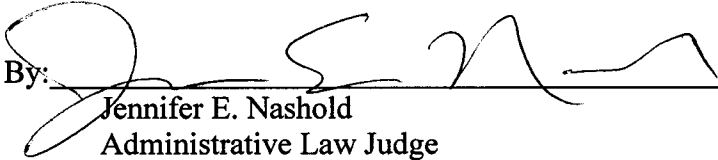
IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional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

**Department Monitor  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
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 Daniel Buettner.

Dated at Madison, Wisconsin on September 21, 2012.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
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By:   
Jennifer E. Nashold  
Administrative Law Judge

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