

## 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 **ANGELA G. YANCEY**, Respondent

FINAL DECISION AND ORDER

Order No. ~~ORDER 0002190~~

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Division of Enforcement Case No. 11 RSA 045


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 10<sup>th</sup> day of December, 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 ANGELA G. YANCEY, Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. SPS-12-0042

ORDER 0002194

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**Division of Legal Services and Compliance<sup>1</sup> Case No. 11 RSA 045**

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

Angela G. Yancey  
5303 North 50<sup>th</sup> St.  
Milwaukee, WI 53218

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

Attorney Susan D. Gu  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 8935  
Madison, WI 53708-8935

Michael J. Berndt  
Chief Legal Counsel  
Department of Safety and Professional Services  
P.O. Box 8935  
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**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 Angela Yancey (Respondent), alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 440.88(6) and Wis. Admin. Code §

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<sup>1</sup> The Division of Legal Services and Compliance was formerly known as the Division of Enforcement. "Division of Enforcement" is used in this decision when describing the procedural history as that was what the Division was called at the time of the actions described.

SPS (then RL)<sup>2</sup> 164.01(2)(m). Respondent failed to file an Answer to the Complaint, failed to attend the telephonic prehearing conference held before the Division of Hearings and Appeals (DHA) on June 20, 2012 and failed to provide a telephone number at which she could be reached for the conference. As a result, the Division filed a Motion for Default, Affidavit in Support of Motion for Default and Argument and Recommendation on June 22, 2012. The administrative law judge (ALJ) issued a Briefing Order on June 13, 2012, which established a due date of July 25, 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 1-6 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Angela G. Yancey (D.O.B. August 8, 1971) is certified as a substance abuse counselor-in-training (certificate #16106-130) in the State of Wisconsin. This certificate was first granted on August 11, 2010 and is current through February 28, 2013.

2. Respondent's most recent address on file with the Department is 5303 North 50<sup>th</sup> Street, Milwaukee, Wisconsin.

3. Respondent was employed as a substance abuse counselor-in-training at Gateway to Change (Gateway), located in Milwaukee, Wisconsin, from August 3, 2010 to August 1, 2011.

4. On or about October 12, 2011, Respondent was involved in an altercation with Client A, who was a part of the Alcohol and Other Drug Abuse (AODA) treatment program led by Respondent.

5. On October 13, 2011, Client A met with Gateway's Executive Director and Clinical Director to report this incident. On October 14, 2011, Gateway's Executive Director and Clinical Director interviewed Respondent in regard to Client A's allegations.

6. Through Client A's allegations and Respondent's admissions during the interview, Gateway discovered that while Respondent was a substance abuse counselor-in-training at Gateway, Respondent dated and had a personal and intimate relationship with Client B, another individual in Respondent's AODA program. The altercation on October 12, 2011 resulted from Respondent learning that Client B was in a new relationship with Client A.

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<sup>2</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."

### **Facts Related to Default**

7. The Complaint and Notice of Hearing in this matter were served on Respondent on May 15, 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 and 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."

8. The Complaint and Notice of Hearing were sent to Respondent at the North 50th Street address noted in finding of fact no. 2 and was returned to the Department by the U.S. Postal Service, stamped "RETURN TO SENDER UNABLE TO FORWARD."

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

10. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for June 20, 2012. Notice of this prehearing conference was sent to Respondent at the North 50th Street address, with instructions that Respondent provide the telephone number at which she could be reached for the conference to the ALJ no later than June 15, 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.**" The Notice was not returned to DHA.

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

12. Based on Respondent's failure to file an Answer to the Complaint and failure to provide a telephone number and make herself available for the prehearing conference in this matter, the Division filed a Motion for Default, Affidavit in Support of Motion for Default and Argument and Recommendation on June 22, 2012, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

13. On June 25, 2012, the ALJ issued a Briefing Order which established a deadline of July 23, 2012 for Respondent to file a response to the Division's motion for default. The Briefing Order was sent to the North 50th Street address and was not returned to DHA.

14. Respondent failed to file a response as required by the Briefing Order.

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Wis. Stat. § 440.88.

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 she 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 by not filing an Answer and by failing to appear at the telephone prehearing conference and failing to provide a telephone number at which she could be reached.

9. Respondent, by engaging in a sexual relationship with Client B, as described above, committed unprofessional conduct as defined by Wis. Admin. Code § SPS 164.01(2)(m), which subjects Respondent to discipline pursuant to Wis. Stat. § 440.88(6).

## **DISCUSSION**

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

Because Respondent failed to provide an Answer to the Complaint filed against her and failed to appear at the June 20, 2012 prehearing conference or provide a telephone number at which she 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 allegations contained in the Complaint, which are accepted as true, are that Gateway discovered that while Respondent was a substance abuse counselor-in-training at Gateway, Respondent “dated and had a personal and intimate relationship with Client B,” an individual in Respondent’s AODA program and that she was involved in an altercation with Client A, another individual in Respondent’s AODA program, when she discovered that Client B was in a new relationship with Client A.

As a result of this conduct, the Division alleged that Respondent engaged in unprofessional conduct under Wis. Admin. Code § SPS 164.02(2)(m), subjecting her to discipline pursuant to Wis. Stat. § 440.88(6). Wisconsin Stat. § 440.88(6) states, “The department may . . . 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 . . .” Wisconsin Admin. Code § SPS 164.01(2)(m) provides:

(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. . . .

The specific unprofessional conduct alleged, Wis. Admin. Code § SPS 164.01(2)(m), requires sexual contact or behavior. However, the Complaint is vague on this point, stating that Respondent “dated and had a personal and intimate relationship” with Client B. No other information has been submitted by the Division demonstrating that a sexual relationship occurred. Dating and having a personal and intimate relationship with someone does not necessarily include sexual contact or sexual behavior. *The American Heritage Dictionary* (2<sup>nd</sup> College Ed. 1985), defines “intimate” as “1. Marked by close acquaintance, association, or familiarity . . . 2. Pertaining to or indicative of one’s deepest nature. 3. Essential; innermost. 4. Characterized by informality and privacy. . . 5. a. Very personal; private. b. Of or having sexual relations.” This definition supports both a sexual and nonsexual interpretation of the term “intimate.”

However, given that the dictionary definition includes “of or having sexual relations,” that Respondent and Client B were dating, that a fight ensued over Client B being in a new relationship with Client A, that the Complaint alleges both a “personal” and an “intimate” relationship, and that the Division alleged this specific violation which involves sexual behavior; I conclude that the phrase “personal and intimate relationship” used in the Complaint is simply an overly delicate way of alleging that a sexual relationship occurred and that a preponderance of the evidence supports that Respondent engaged in a sexual relationship with Client B.

Even if the Complaint did not support such a conclusion, however, Respondent's conduct would nevertheless constitute unprofessional conduct under Wis. Admin. Code § SPS 164.01(2) because the behavior alleged "violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public." Wis. Admin. Code § SPS 164.01(2). The subsections under SPS § 164.01(2), including subsection (2)(m) alleged here, are examples, and not an exhaustive list of, specific conduct that constitutes unprofessional conduct under § SPS 164.01(2). See Wis. Admin. Code § SPS 164.01(2) ("unprofessional conduct includes the following:") (emphasis added). Therefore, even if the conduct alleged in the Complaint is insufficient to establish unprofessional conduct under § SPS 164.01(2)(m), it nevertheless constitutes a violation under the general definition of unprofessional conduct contained in § SPS 164.01(2).<sup>3</sup>

### **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 revoked. Under the circumstances of this case, and considering the factors delineated in *Aldrich*, revocation is warranted. By engaging in a sexual relationship with a client and getting into an altercation with another client, Respondent flagrantly disregarded the required boundaries between counselor and client and likewise ignored the best interests and treatment of the client. Protection of the public and deterrence are best served by revocation of Respondent's license. The fact that Respondent has not participated in these proceedings demonstrates that she has not taken responsibility for her actions and strengthens concerns that she has not been rehabilitated.

### **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;

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<sup>3</sup> Though not charged in the Complaint, Respondent's conduct would also constitute unprofessional conduct under Wis. Admin. Code § SPS 164.01(2)(n), which prohibits "[f]ailing to avoid dual relationships or relationships that may impair the substance abuse professional's objectivity or create a conflict of interest."



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 a sexual relationship with a client and an altercation with another client, 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 her 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 Angela Yancey's license is hereby REVOKED, pursuant to § 440.88(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 Angela Yancey.

Dated at Madison, Wisconsin on September 25, 2012.

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: 

Jennifer E. Nashold  
Administrative Law Judge

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