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Before The
State Of Wisconsin
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING
AND SOCIAL WORK EXAMINING BOARD

In the Matter of the Disciplinary Proceedings
Against **JAMES J. ROCHE**, Respondent

FINAL DECISION AND ORDER
Order No. _____

ORDER 0002259

Division of Enforcement Case No. 12 SOC 036

The State of Wisconsin, Marriage and Family Therapy, Professional Counseling and Social Work Examining Board, 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, Marriage and Family Therapy, Professional Counseling and Social Work Examining Board.

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 7th day of November, 2012.

A handwritten signature in black ink, appearing to be "En. Allen", written over a horizontal line.

Member
Marriage and Family Therapy, Professional
Counseling and Social Work Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **JAMES J. ROCHE**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-12-0030

ORDER 0002259

Division of Enforcement Case No. 12 SOC 036

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

James J. Roche
338 8th Ave., Suite 303
Vancouver, BC V5Y 3X2
CANADA

Social Work Examining Board
P.O. Box 8935
Madison, WI 53708-8935

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

Attorney Chad W. Koplien
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, Division of Enforcement (the Division), filed a formal Notice of Hearing and Complaint against Respondent James Roche (Respondent), alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 457.26(2) and Wis. Admin. Code §§ MPSW 20.02(4), 8.02(3) and 8.02(1). 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 16, 2012 and failed to appear at the prehearing conference. As a result, the Division moved for default and the

Administrative Law Judge (ALJ) ordered briefing on the motion in a Briefing Order dated May 22, 2012. The Division filed its motion for default and affidavit in support thereof on May 17, 2012. Respondent failed to file a response.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of Fact 1-9 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent, date of birth May 17, 1953, is a licensed clinical social worker in the state of Wisconsin pursuant to license number 2286-123. This license was first granted on February 4, 1994.

2. Respondent's most recent address on file with the Department of Safety and Professional Services is 338 West 8th Avenue, Suite 303, Vancouver, British Columbia, V5Y 3X2, Canada.

3. On January 20, 2011, Respondent completed an application to renew his clinical social work license in the State of Wisconsin. In the continuing education portion of the application, Respondent certified the following statement:

I have or will have completed 30 credit hours of continuing education, including at least 4 hours in the area of social work ethics and boundaries, as provided in section MPSW 8.02, Wisconsin Administrative Code, between March 1, 2009 and February 28, 2011. I have or will have evidence of this which I will furnish to the Board upon request.

4. In July 2011, the Department's Credentialing Division ("Credentialing") conducted a continuing education audit for the 2009-2011 credentialing period on behalf of the Social Worker Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board ("Section"). Respondent was selected to participate in and comply with this audit.

5. Credentialing staff sent two letters to Respondent, dated July 7, 2011 and August 11, 2011, informing him of the audit and requesting that he submit an attendance table, which lists all the continuing education hours ("CEHs") he completed during the 2009-2011 credentialing period, and proof of attendance for these hours.

6. Respondent did not comply with or respond to either request for documentation. As a result, Enforcement staff opened an investigation in this matter on February 10, 2012.

7. On February 27, 2012, Enforcement staff sent a letter to Respondent explaining that, due to his lack of compliance with the previous requests, there was insufficient evidence to support his claim that he completed the required CEHs during the 2009-2011 credentialing

period. This letter allowed Respondent a final opportunity to submit the appropriate documentation by March 16, 2012 if he had in fact completed them.

8. Respondent did not comply or respond to this final request for documentation.

9. On March 16, 2012, Enforcement staff attempted to contact Respondent using the most recent telephone number on file but was unsuccessful.

10. On April 10, 2012, the Division filed a formal Notice of Hearing and Complaint against Respondent alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 457.26(2) and Wis. Admin. Code §§ MPSW 20.02(4), 8.02(3) and 8.02(1).

Facts Related to Default

11. The Notice of Hearing and Complaint in this matter were served on Respondent on April 10, 2012, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing stated that Respondent was required to file an 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 [Section 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."

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

13. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for May 16, 2012. Notice of this prehearing conference was sent to Respondent at the Vancouver address, with instructions that Respondent provide the telephone number at which he could be reached for the conference to the ALJ no later than May 11, 2012. The Notice was not returned to DHA as undeliverable.

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

15. Based on Respondent's failure to file an Answer to the Complaint and failure to make himself available for the prehearing in this matter, the Division filed a motion for default and affidavit in support thereof on May 17, 2012 pursuant to Wis. Admin. Code §§ SPS 2.09 and 2.14 and Wis. Admin. Code § HA 1.07(3)(c).¹

16. The ALJ ordered briefing on the motion in a Briefing Order dated May 22, 2012. The Briefing Order was sent to Respondent at the Vancouver address and was not returned to DHA as undeliverable.

¹ The Division also argues that because Respondent did not respond to the Division's Request for Admissions, the truth of the matters asserted in the requests are deemed admitted under Wis. Stat. § 804.11. In light of my determinations with respect to the Division's default motion, I need not consider the Division's alternative argument regarding Respondent's failure to answer the requests to admit.

17. Respondent failed to file a response brief as ordered by the Briefing Order.

CONCLUSIONS OF LAW

1. The Section has jurisdiction over this matter pursuant to Wis. Stat. § 457.26.

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... 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. 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 and Briefing Order.

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 by not filing an Answer and by failing to appear at the telephone prehearing conference.

9. Pursuant to Wis. Stat. § 457.26(2), the Section “may reprimand a credential holder or deny, limit, suspend, or revoke a credential under this chapter if it finds that the applicant credential holder has done any of the following: (a) Made a material misstatement in an application for a credential or for renewal of a credential. . . . (f) Engaged in unprofessional or unethical conduct in violation of the code of ethics established in the rules promulgated under s. 457.03 (2)” or “(h) Violated this chapter or any rule promulgated under this chapter.”

10. Pursuant to Wis. Admin. Code § MPSW 20.02, “[u]nprofessional conduct related to the practice under a credential issued under ch. 457, Stats., includes, but is not limited to, engaging in, attempting to engage in, or aiding or abetting the following conduct: . . . (4) Using fraud or deception in the application for a credential.”

11. Pursuant to Wis. Admin. Code § MPSW 8.02:

(1) Unless granted a postponement or waiver under sub. (7), every . . . clinical social worker shall complete at least 30 education hours in each 2-year credentialing period which begins on March 1 of each odd-numbered year as specified in s. 457.20 (2), Stats., and shall verify compliance as part of his or her application for credential renewal.

(a) The 30 continuing education hours shall be in courses and programs specified in this chapter.

(b) Of the 30 required hours, at least 4 hours shall be in the subject area of social work ethics and boundaries.

...
(3) Every credential holder shall retain original documents showing attendance at programs and completion of self-developed programs for at least 4 years from the time that credit is claimed for the continuing education program. At the request of the section, credential holders shall deliver their original documents to the section.

12. The conduct in Findings of Fact Nos. 3-9 establish that Respondent made a material misstatement in an application for renewal of a credential, in violation of Wis. Stat. § 457.26(2) and that he used fraud or deception in the application for a credential, in violation of Wis. Admin. Code § MPSW 20.02(4). This conduct subjects Respondent to discipline pursuant to Wis. Stat. § 457.26(2).

13. The conduct in Findings of Fact Nos. 3-9 establishes that Respondent failed to deliver to the Section original documents that show attendance at the continuing education programs for which credit was claimed. This conduct constitutes a violation of Wis. Admin. Code § MPSW 8.02(3), and subjects Respondent to discipline pursuant to Wis. Stat. § 457.26(2).

14. The conduct in Findings of Fact Nos. 3-9 establishes that Respondent failed to complete at least 30 continuing education hours in the 2009-2011 credentialing period as required by Wis. Admin. Code § MPSW 8.02(1). This conduct subjects Respondent to discipline pursuant to Wis. Stat. § 457.26(2).

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against him and failing to appear at the prehearing conference or provide a telephone number at which he could be reached, Respondent has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code §§ SPS 2.09(3) and 2.14, and Wis. Admin. Code § HA 1.07(3)(b) and (c). As such, it is undisputed that the events alleged in the Complaint, set forth in Findings of Fact Nos. 3-9, occurred. As stated in the Conclusions of Law, above, this conduct constitutes a violation of Wis. Stat. § 457.26(2), and Wis. Admin. Code §§ 20.02(4) and 8.02(1) and (3).

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 for the conduct described above and that the full costs of the investigation and disciplinary proceedings be imposed on Respondent.² Based on the facts of this case and the three purposes of discipline, revocation is appropriate. Clinical social workers must complete 30 credit hours of continuing education during a two-year period, including 4 hours in the area of social work ethics and boundaries. Such education is critical in keeping members of the profession current in their field and to educate or remind them of the professional and ethical standards required of them. In his January 20, 2011 application for renewal of his license, Respondent certified that he had completed his required hours of continuing education for March 1, 2009 through February 28, 2011.

However, on three separate occasions, during the time period from July 7, 2011 through February 27, 2012, Credentialing and Enforcement staff requested that Respondent send proof of completion of the required continuing education hours. Respondent failed to comply or respond to any of these requests for documentation. On March 16, 2012, Enforcement staff attempted to contact Respondent using the most recent telephone number on file but was unsuccessful.

These facts support the conclusion that Respondent not only failed to complete the required continuing education requirements but that he was untruthful in his application for license renewal. Such conduct poses a risk to the public Respondent serves in that it jeopardizes his professional competency, including ethical competency, and demonstrates Respondent's lack of trustworthiness.

The fact that Respondent has not participated at all in these proceedings is indicative that he has not been rehabilitated and does not take these proceedings or his license seriously. Finally, the significant discipline imposed serves to deter others from making untruthful

² The Division does not provide an explanation for these recommendations.

statements in their license applications and failing to comply with their profession's educational requirements and with the Section's requests for documentation.

Costs

As stated, 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 and in the Discipline section above, Respondent should be assessed the full amount of recoverable costs.

The alleged conduct is of a serious nature, he 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 the medical profession who have not engaged in such conduct.

If the Section 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 the clinical social worker license of Respondent James J. Roche is hereby REVOKED, pursuant to Wis. Stat. § 457.26.

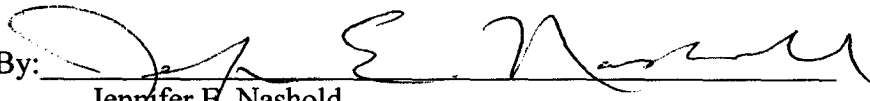
IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional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

Dated at Madison, Wisconsin on August 21, 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