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Before The
State Of Wisconsin
PSYCHOLOGY EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against
RANDI ERICKSON, PSY.D., Respondent

FINAL DECISION AND ORDER
Order No. ORDER 0002282

Division of Legal Services and Compliance Case No. 11 PSY 033

The State of Wisconsin, Psychology 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, Psychology 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 6th day of February, 2013.

Bruce R Edman PhD
Member
Psychology Examining Board

Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings Against **RANDI L. ERICKSON, PSY.D,** Respondent	PROPOSED DECISION AND ORDER DHA Case No. SPS-12-0029

Division of Legal Services and Compliance[1] Case No. 11 PSY 033 ORDER 0002282

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

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The above-captioned matter is before this tribunal on a motion for default filed by the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division). The motion for default is based on Respondent's failure to appear at the hearing scheduled for this matter on August 7, 2012.

[1] The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

The Division's motion is granted. However, because this tribunal does not enter an order of default lightly and generally prefers to determine cases following a hearing on the merits, a detailed history is provided below which demonstrates why default is more than warranted as a result of Respondent's history of disregard for these proceedings and this tribunal's orders.

FINDINGS OF FACT

Facts Related to Alleged Violations

Findings of Fact 1-15 are taken from the Complaint filed by the Division in this matter, except as otherwise noted.

1. Randi Erickson, Psy.D., was born on May 10, 1950, and is licensed to practice psychology in the state of Wisconsin pursuant to license number 2256-57, which was first granted on September 14, 2000.

2. Dr. Erickson's most recent address on record with the Psychology Examining Board (Board) is 2910 Enloe Street, #104, Hudson, Wisconsin, 54016.

3. At all times relevant to this proceeding, Dr. Erickson was practicing psychology in Hudson, Wisconsin, at Croix Counseling and Psychology.

4. On November 1, 2011, Dr. Erickson was notified that she was the subject of a complaint to the Board. She was requested to provide a response to the complaint and a certified copy of her records of her treatment of Patient A, and to provide the response on or before November 22, 2011. The November 1, 2012 request to Dr. Erickson was from Division employee Lydia Bridge. (Bridge Affidavit and Bridge Exhibit 1, attached to Division's Reply Brief)

5. On November 23, 2011, Dr. Erickson asked for an extension of time to respond to the request for a response and records.

6. On November 29, 2011, the Division sent Dr. Erickson an email telling her that her email requesting an extension of time to respond would be provided to the screening panel and that if she decided to send a substantive response, that the substantive response would also be provided to the screening panel if the response arrived in time.

7. On January 10, 2012, the Division received a packet consisting of letters and some billing records relating to Patient A, but the packet did not include the certified records of Erickson's treatment of Patient A.

8. On February 20, 2012, Investigator Hannah Whaley of the Division sent another request to Dr. Erickson for a certified copy of her treatment records of Patient A. The request asked for a response by March 5, 2012.

9. On March 7, 2012, Investigator Whaley contacted Croix Counseling and spoke with the receptionist, who informed Investigator Whaley that Dr. Erickson was out of the office until the following week. The receptionist further informed Investigator Whaley that she had already gathered all the records and had given them to Dr. Erickson, and that the receptionist was waiting for Dr. Erickson to review the records. Investigator Whaley requested that Dr. Erickson contact her when Dr. Erickson returned to the Croix Counseling and Psychology office the following week.

10. On March 13, 2012, Investigator Whaley contacted Croix Counseling and spoke with the receptionist, who informed Investigator Whaley that Dr. Erickson was expected back in the office on March 15, 2012. Investigator Whaley repeated her request for Dr. Erickson to contact her.

11. On March 15, 2012, Investigator Whaley contacted Croix Counseling and spoke with reception again. Investigator Whaley was told that Dr. Erickson would be in later that day.

Investigator Whaley again asked that Dr. Erickson contact her, at least by voicemail, with a message letting her know when she could expect the records.

12. Having had no response from Dr. Erickson, on March 16, 2012, Investigator Whaley sent a further request for a certified copy of Dr. Erickson's treatment records of Patient A., this request asking for immediate response.

13. Still having had no response, on March 21, 2012, Investigator Whaley called Croix Counseling and was directed to a voice messaging system; Investigator Whaley left a voicemail requesting a call back as to when she would receive the requested records.

14. On March 28, 2012, Investigator Whaley received a telephone call from Stephanie at Croix Counseling and Psychology, saying that Dr. Erickson had left a note for her saying that the records would be mailed on March 28, 2012. Investigator Whaley told Stephanie that she would expect the records on Monday, April 2, 2012.

15. As of April 4, 2012, the Division had not received the certified copy of the records it had requested.[2]

Facts Related to Default

16. The proceedings in this matter were initiated when the Division served a formal Complaint against Dr. Erickson on April 4, 2012 , alleging that she was subject to discipline for engaging in unprofessional conduct under Wis. Stat. § 440.22 and Wis. Admin. Code § Psy 5.01(24). Specifically, the Complaint alleged that Dr. Erickson failed to provide records requested by the Board on November 11, 2011, February 20, 2012 and March 16, 2012, thereby obstructing investigation of her conduct.

[2] The April 4, 2012 date contained in the Complaint was also the date the Complaint was filed with DHA. As of the final brief submitted by the Division in October, 2012, Dr. Erickson still had not submitted the requested records.

17. Following expiration of the 20-day time period in which Dr. Erickson was required to file an Answer to the Complaint, the undersigned administrative law judge (ALJ) issued a Notice of Telephone Prehearing Conference setting a prehearing conference for May 7, 2012. The Notice informed the parties: "A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent."

18. At the May 7, 2012 conference, Ms. Erickson stated her intent to hire an attorney. With the agreement of the parties at the conference, a hearing date was set for August 7, 2012 at 10:00 a.m., and a status conference was also set for May 22, 2012 at 11:30 a.m.

19. On the same day of the prehearing conference, May 7, 2012, a Notice of Hearing and Status Conference was sent to both parties, setting the August 7, 2012 hearing date as well as the May 22, 2012 status conference. The May 7, 2012 Notice stated, "As stated at the May 7, 2012 status conference, if [Dr.] Erickson wishes to obtain an attorney to assist her in this matter, the attorney should appear at the May 22, 2012 status conference and also file a Notice of Appearance with the ALJ prior to the May 22, 2012 conference."

20. On May 14, 2012, Dr. Erickson filed a letter with the ALJ, along with a packet of information which included a letter addressed to Investigator Whaley and a lengthy article on parental alienation syndrome, with which Dr. Erickson apparently believes Patient A's mother, the complainant in this case, is afflicted. In her letter to the ALJ, Dr. Erickson indicated that she had been told in a telephone conversation by Ms. Bridge that she was permitted to send a substantive response in lieu of sending the requested records. The letter further stated that she had been waiting for a response from Investigator Whaley as to whether she still wished to receive the records now that a prehearing conference had been scheduled and if so, where the records should be sent.

21. On May 21, 2012, at 12:08 p.m., the day before the status conference scheduled for 11:30 a.m., Dr. Erickson sent an email to counsel for the Division, which was forwarded to the ALJ and which stated, in part: "It was my understanding that we were schedule[d] for a 10 am telephone conference this morning, Monday 5/19/12 and that you would be calling my office [phone number] to discuss whether or not I had retained an attorney." She further stated that she was still unrepresented and had contacted two attorneys. She stated that she intended to retain an attorney to represent her in an action she had decided to take regarding past and current disciplinary proceedings initiated by the Division related to parental alienation syndrome. She stated, "There is a considerable amount of data to review from the previous 5 year investigation, as I'm sure you're aware. This is why I do not yet have an attorney to represent me regarding the current allegations of uncooperation."

22. Approximately ten minutes later, at 12:19 p.m., on May 21, 2012, Attorney Polewski responded to Dr. Erickson, copying the ALJ, stating that the prehearing conference was scheduled for the following day, May 22, 2012, at 11:30 a.m., and that Dr. Erickson should review the ALJ's May 7, 2012 notice of hearing and status conference. Dr. Erickson responded at 8:54 p.m. on May 21, 2012, stating that she did not know about a May 7, 2012 Notice and that she did not understand why the date and time had been changed.[3] She stated that she was scheduled for an out-of-office appointment at 11:30 a.m. on May 22, 2012 but that she would try to reschedule the appointment so she could be available for the conference. The May 7, 2012 Notice scheduling the May 22, 2012 conference was sent to the same address for Dr. Erickson as the Notice sent for the original prehearing conference at which Dr. Erickson appeared on May 7, 2012, and which is the same address (set forth in the caption above) that has been used throughout these proceedings.

[3] The date and time of the status conference had never been changed.

23. On May 22, 2012, at 8:55 a.m., approximately two and a half hours prior to the scheduled status conference, the ALJ emailed Dr. Erickson, copying the Division, reminding her of the date and time scheduled for the status conference. A subsequent email was sent to her that same date at approximately 10:45 a.m., asking Dr. Erickson for confirmation of her mailing address; however, Dr. Erickson never responded. Dr. Erickson did not appear for the May 22, 2012 telephone conference.

24. In response to Dr. Erickson's request, the ALJ provided another opportunity for Dr. Erickson to appear at a prehearing conference and on May 25, 2012, issued another Notice of Telephone Prehearing Conference scheduling a prehearing conference for May 31, 2012. The Notice again informed the parties: "**A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent.**" (Emphasis in original) Dr. Erickson failed to appear at the May 31, 2012 conference.

25. An Order was issued on June 5, 2012, in which the August 7, 2012 hearing date was again set forth, along with associated deadlines, such as the filing and exchange of witness and exhibit lists and the filing and exchange of exhibits. Dr. Erickson never filed any of these documents.

26. On July 26, 2012, the ALJ and counsel for the Division received an email from Dr. Erickson requesting that the hearing in this matter, set for August 7, 2012, be postponed by six weeks. As grounds for her request, Dr. Erickson stated that she wished to "become better educated regarding the process [she] must go through to defend [her]self" or to obtain an attorney if she could afford one. As further grounds, she stated that the Division had reassigned the case to a new attorney (Attorney Polewski had to be out of the office for several weeks), and

that she had not been able to sufficiently discuss the matter with new Division counsel. The Division objected to the request for a postponement of the hearing on grounds that the hearing date was less than two weeks away, that reassignment of the case to a different attorney did not affect Dr. Erickson's defense in any way and that Dr. Erickson had been aware of the hearing date for many months and had not obtained an attorney during that time period.

27. Given the closeness of the hearing date, the ALJ reviewed the record and, on the same day the request for the postponement was requested, Thursday, July 26, 2012, the ALJ informed the parties that she would be issuing an order on Monday, July 30, 2012, denying Dr. Erickson's request for a postponement of the hearing. On July 30, The ALJ issued an order denying the request for postponement of the hearing, agreeing with the Division that Dr. Erickson had not shown a sufficient basis for her postponement request. The ALJ noted the late date on which the rescheduling request was received, that the Division's witnesses had been disclosed pursuant to the scheduling order and had presumably made themselves available for the August 7, 2012 hearing, that Dr. Erickson had known of the hearing date since May 7, 2012 and had been discussing obtaining an attorney since that time, and that the reassignment of the Division's attorney did not affect Dr. Erickson's defense.

28. A few hours after the ALJ emailed the parties the order denying the request for a postponement of the hearing, Dr. Erickson emailed the ALJ and Division, making "one last plea" to consider additional information and the "potential positive impact [the ALJ's] actions can have on the field of psychology in Wisconsin." The five-page letter from Dr. Erickson attached to the email, dated July 29, 2012 began by stating, "I can understand your reasons for denying my request for a[n] extension to prepare for the hearing scheduled for Aug. 7, 2012, since I have not given you adequate reason to believe it may be necessary." She then provided several other

reasons for being "unable to prepare adequately" for the hearing. However, the reasons provided related primarily to her failure to respond to the Division's request for information. She stated: "Following are the other reasons it has taken me as long as it has to respond to the department, as I would have liked" and listed the following: (1) "time and financial constraints," including her husband's business partner not being honest with her husband about their construction business and failing to make payments on their business loan which Dr. Erickson and her husband guaranteed personally with their cabin and their home; (2) that she was currently in foreclosure which was "*partially why* [she] ha[d] not been able to afford to retain an attorney" (emphasis in original); (3) she had to pay thirteen percent interest on her office space for the past year because the bank refused to refinance her office mortgage when it became due; (3) she had not been able to take any income from her business for well over a year because she sees very few clients due to her health; (4) she had an office employee commit fraud against her business by not submitting any of her business's claims to insurance companies, and although she was able to get all of the claims submitted eventually, she had to appeal all of the rejected claims; (5) she had to invest all of her 401k and health insurance investments to continue her business; (6) she wears rigid braces on both of her hands which makes it difficult to go through paperwork and files; (7) the information requested from the Department involved two child clients (in fact, the Division's request concerned only one child, Patient A), who she had seen at three different clinic locations for a total of six years; (8) although her office manager had informed the Division that the files were actually copied and ready to mail, it was difficult for Dr. Erickson to review them; and (9) she was required to take several trips to northern Minnesota where her mother-in-law had been hospitalized for a heart attack, followed by trips to move her from the hospital back to assisted living and to a nursing home. She stated that this took place "within the first 2 months after

receiving your request," presumably referring to the Division's request in November of 2011. The remaining approximately three pages consisted of her characterization of the Division's past disciplinary proceeding against her, and her views on parental alienation syndrome. She also requested that members of the Board be present at the hearing and that if the case were dropped, that she be permitted to attend monthly meetings to present information to the Board on parental alienation syndrome.

29. A few hours after the first email and attachments, she sent another email to the ALJ, again discussing parental alienation syndrome and also asking who the individuals were that were copied on her email. The ALJ responded, informing Dr. Erickson that she copies her administrative assistant on emails so that they are printed for the file. The ALJ further restated that with respect to the merits of her case, Dr. Erickson should present any defense regarding the allegations at the hearing on August 7, 2012 and that cases were decided by hearing, not through email.

30. On the morning of Friday, August 3, 2012, the ALJ emailed the parties, informing them that the matter was still set for hearing the following Tuesday, August 7, 2012, and that because the ALJ would be out of the office on Monday, August 6, 2012, she wished to be informed that day (August 3, 2012) of any settlement or "other development that obviates the need for a hearing."

31. Later in the afternoon of August 3, 2012, Dr. Erickson responded by email stating, "I think that I have actually been able to borrow the amount of money needed in order to retain an attorney" and that unless the ALJ had already received a letter from her attorney asking for an extension, the ALJ likely would receive the letter by Tuesday. She further stated, "Hopefully you can extend you[r] time off beyond Monday, and this won't be an extreme inconvenience for

you." The ALJ responded that day, stating that if Dr. Erickson were represented by an attorney, the ALJ could have no further contact directly with her; however, the ALJ wished to be informed of the name of Dr. Erickson's attorney. Dr. Erickson never responded to the question regarding the name of her attorney.

32. No other communications were sent to the ALJ by Dr. Erickson (or an attorney) until the evening before the scheduled hearing, Monday, August 6, 2012, at 7:52 p.m., when Dr. Erickson emailed the ALJ stating, "Attached is a document explaining why I will not be attending the hearing on Aug 7, 2012 including a request that you do not hold he hearing without me present." It further stated:

> I don't know if you've received anything from the [still unnamed] attorney I am retaining yet, or not. I'm assuming not, since it didn't sound as though things could move as swiftly as we would have liked them to. In case you have not received any communication regarding this, I just wanted to make sure you knew that I was being advised NOT to appear unrepresented, and also were aware of the other actions I am taking. I continue to be open to settlement discussions with [the Division's attorney], however she has not responded to my requests to do so. I also continue to hope that you will grant my previous request for a time exten[s]ion so that I can prepare more adequately, now that I have been able to work on funding and retaining an attorney, considering all of the other issues and financial matters that are currently going on in my life, as I've already shared with you. One last bit of information. I have discussed my physical disability with you also, and I am currently not doing well with the chemotherapy[4] I am on, or even with the other medications that my doctor has been experimenting with. I have a doctor's appointment at 9:00 tomorrow and it's crucial that I attend.

33. Dr. Erickson attached a page and a half, single-spaced letter to the email, addressed to the ALJ, which began, "Since I continue to be in the process of officially retaining my attorney, and you may not receive a letter of formal request for an extension from the attorney representing me before Aug. 7, 2012, I felt I should, in good faith, forward the following information to [the ALJ] regarding the administrative hearing set for this date." She then stated

[4] Dr. Erickson states that she was on chemotherapy for her rheumatoid arthritis. (Affidavit in Opposition to Motion for Default, ¶ 6)

that she believed it would be a violation of due process to require her to attend the hearing or to hold it without her presence, that she was refused "not only information and clarification" but also "the opportunity to discuss settlement options" with the Division attorney. Her letter went on to state that she was in the process of filing a law suit for due process violations for two separate but identical complaints filed against her by the Division. The letter ended as follows: "But it is now clear that legal action must be taken if the significant level of ignorance regarding cases involving parental alienation is to be changed. I regret that I have to take this action. I will not be present at the administrative hearing on August 7, 2012. And in order to avoid further due process violations, I respectfully request that the hearing not be held."

34. The Division was not copied on Dr. Erickson's 7:52 p.m. email; however, the ALJ forwarded it to the Division's attorney when the ALJ became aware of it at 11:20 p.m. The Division's attorney responded by email the following morning, approximately an hour and a half prior to hearing, stating that she wished to move for default. The ALJ responded in an email to the parties that she would be at the 10:00 a.m. hearing and that the Division could make any motions it wished to make then.

35. Dr. Erickson did not appear at the hearing. The attorney for the Division and the Division's two witnesses were present and prepared for hearing. Counsel for the Division stated that she would file a motion for default and the ALJ stated that she would provide Dr. Erickson an opportunity to respond.

36. The same day of the hearing, at 4:46 p.m., Dr. Erickson sent another lengthy email to the ALJ and to the Division's attorney, asking if the hearing had taken place, stating that she was concerned that the ALJ may not have received anything from her still unnamed attorney, again

discussing parental alienation syndrome, and stating that she would be willing to meet with the Board, which she knew met the following day.

37. At 7:16 p.m. on the evening of the hearing, Dr. Erickson sent a five and half, single-spaced page email to a Board member, which was forwarded to the ALJ by Dan Williams, the Executive Director of the Division of Board Services, which repeated many of the same assertions previously made in other correspondence. The email ended with Dr. Erickson's offer to drive to the Board meeting in Madison the next day, August 8, 2012.

38. On August 8, 2012, the ALJ informed Dr. Erickson by email that the Division and ALJ had appeared for the hearing; that the Division would file a motion for default based on Dr. Erickson's failure to appear, and that Dr. Erickson would be given the opportunity to respond to the motion.

39. The Division filed its motion for default and documents in support thereof on August 20, 2012, and that same day, the ALJ sent a briefing order to the parties, which set dates for Dr. Erickson's response brief and the Division's reply brief. On September 20, 2012, the due date for Dr. Erickson's response brief and approximately a month and a half from the date that Dr. Erickson suggested she had retained counsel, Dr. Erickson's newly retained counsel filed a response brief in which he indicated that he "has only recently been retained in this matter." The Division filed a reply brief, again reiterating its position that default should be entered against Dr. Erickson.

DISCUSSION

Default

Wisconsin Admin. Code § SPS 2.14 states:

> **Default.** If the respondent . . . fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make

> findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to . . . defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

See also Wis. Admin. Code § HA 1.07(3)(b) ("If a respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate, unless good cause is shown for the failure to appear.")

Pursuant to these provisions, when a respondent does not appear at the hearing, the ALJ may take the allegations as true and make findings of fact and enter a default order based on the complaint and other evidence. However, the ALJ may decline to enter default based on a respondent's failure to appear if "good cause" is shown.[5]

Dr. Erickson's motion and brief in opposition to default does not even mention her deliberate failure to appear at the August 7, 2012 hearing, much less offer "good cause" for such failure.[6] Instead, the submissions focus on a potential theory of defense to the underlying complaint, primarily, that Dr. Erickson did not respond to requests for Patient A's records because she did not believe the authorization for release of the records provided by Patient A's mother was legally adequate in light of Dr. Erickson's alleged understanding that Patient' A's grandmother was Patient A's legal guardian. This defense has never previously been offered by

[5] While "good cause" is not defined in Chapter SPS 2 or Chapter HA 1, the Division points out that Rule 55(c) of the Federal Rules of Civil Procedure provides that a federal court may set aside the entry of default for "good cause." The Division also cites *Indigo America, Inc. v. Big Impressions, LLC*, 597 F.3d 1, 2 (1st Cir. 2012), in which the court listed factors to be considered in determining whether good cause exists to set aside the entry of default, which include (1) whether the default was willful; (2) whether setting aside the default would prejudice the adversary; (3) whether the defaulter presented a meritorious defense to the underling complaint; (4) the nature of the defaulter's explanation for the default; (5) the good faith of the parties; (6) the amount of money involved; and (7) the timing of the motion to set aside the entry of default. While the situation here is distinguishable from Rule 55 proceedings and *Indigo* in that here, default has not yet been entered and the default motion is based on a failure to appear at hearing rather than on a deficiency in the answer to the complaint, this tribunal nevertheless considers many of the factors set forth in *Indigo* in granting default here, particularly given the absence of other standards defining "good cause" for purposes of § SPS 2.14 and HA 1.07(3)(b).

[6] Although Dr. Erickson now states in a sworn affidavit that it was her "intention to appear at the hearing," (Affidavit in Opposition to the Division's Motion for Default, ¶ 5), it is clear from the facts set forth above that she had no intention of doing so.

Dr. Erickson in her voluminous submissions to the ALJ, the Division and the Board regarding why she failed to produce the requested documents. Dr. Erickson further states that she believed she could produce a substantive response to the underlying complaint filed with the Department in lieu of providing the requested documents themselves.

Had Dr. Erickson wished to present a defense to the allegation, the time to have done so was at the August 7, 2012 hearing. Instead, she failed to appear at the hearing and now seeks to litigate the merits through briefing that is more fitting for summary judgment than default proceedings.

The brief in opposition to the motion for default completely overlooks the fact that Dr. Erickson chose not to appear at the hearing scheduled in this matter. The only grounds now asserted for her failure to appear are contained in her affidavit attached to her brief, in which she states that, because she had not retained an attorney, she was "emotionally and psychologically not prepared to go forward with the hearing." Such grounds do not constitute "good cause" under Wis. Admin. Code § SPS 2.14 or Wis. Admin. Code § HA 1.07(3)(b).

In fact, the same conclusion was reached approximately a week prior to the hearing in the ALJ's order denying Dr. Erickson's motion for a postponement of the hearing. In that order, the ALJ concluded that Dr. Erickson had not demonstrated sufficient grounds for postponing the scheduled hearing. The grounds Dr. Erickson asserted at that time were that she wished to become better educated regarding the process to defend herself or obtain an attorney if she could afford one, and that the case had been reassigned from one attorney to another at the Division and she believed she had not had sufficient time to discuss the case with the new attorney.

In concluding that Dr. Erickson had not presented adequate grounds for postponement of the hearing, the ALJ noted the late date of the request for postponement of hearing; that the

Division's witnesses had been disclosed and had presumably made themselves available for hearing; that the reassignment of the Division's attorney did not affect Dr. Erickson's defense; that the August 7, 2012 hearing date was first established on May 7, 2012, three months prior to the hearing date; that Dr. Erickson had been discussing retaining an attorney at least since May, 2012.

When the ALJ denied Dr. Erickson's motion for postponement of the hearing, Dr. Erickson chose not to attend the hearing. She informed the ALJ of her decision not to attend in an email sent at approximately 8:00 p.m. the night before the 10:00 a.m. hearing. In her email, she offered another round of justifications, some old and some new, for not attending the hearing. She stated that she was being advised by unnamed persons[7] not to appear unrepresented; that she was taking legal action against the Department, that she still needed to work on funding for an attorney; that she had "other issues and financial matters" going on in her life, and that she was not currently doing well with her chemotherapy for rheumatoid arthritis and had a doctor's appointment at 9:00 a.m. the morning the hearing was to be held. Dr. Erickson did not state when she made this appointment, how long she knew about it, or why she did not previously inform the ALJ of her appointment or that medical issues prevented her participation in the hearing. Notably, whatever medical issues Dr. Erickson had did not prevent her from corresponding numerous times, and at length, on the day of the hearing with the ALJ, the Division and a Board member or from offering to drive approximately four hours to Madison the day after the hearing to meet with the Board and educate the Board with respect to parental alienation syndrome. Also, Dr. Erickson has evidently abandoned the doctor appointment

[7] In the affidavit submitted with her brief, she states the advice was provided by "friends and colleagues." (Affidavit in Opposition to the Division's Motion for Default, ¶ 5)

justification as it is nowhere mentioned in her affidavit or brief as to why she failed to appear or why default should not be entered.

Moreover, even if it were appropriate at this juncture to look at the merits of the defenses which Dr. Erickson should have presented at the scheduled hearing, such an analysis would be unavailing to Dr. Erickson, as her defenses appear to be incredibly weak, if not suspect.

As stated, the record is replete with Dr. Erickson's excuses for failing to send the records requested by the Division. Not once did she base her failure to send the documents to the Division on the assertion that the authorization was not legitimate.[8] In fact, she often expressed a willingness to send the records. On May 14, 2012, Dr. Erickson provided the ALJ with a copy of a letter she sent to Investigator Whaley dated March 22, 2012 and "revised" on April 9, 2012. In this five and a half-page, single-spaced letter, Dr. Erickson states, "However, I am not sure whether or not my response to the Notice of Hearing questions should be sent to you since it has always been my plan to forward the records. I assume that I am still responsible for sending the records originally requested by you, which I am now prepared to do if this is appropriate. Please inform me as what my next step should be." (Dr. Erickson's March 22, 2012 letter to Investigator Whaley, p. 1) She further states, "I did not intentionally *refuse* to send certified records when I was first contacted. I did delay in sending those records when I was contacted the second time for various reasons, none of which are intentional." (*Id.*, p. 4) The letter listed many personal reasons for not providing the records and went on at length about parental alienation

[8] In a letter to Patient A's mother dated January 24, 2012, received by the ALJ on June 19, 2012, Dr. Erickson informed Patient A's mother why she did not immediately provide records to her when Patient A's mother appeared at Dr. Erickson's office and requested them. Dr. Erickson mentions HIPPA concerns and states, "[D]uring the vast majority of time I was working with [Patient A], you did not have either legal custody or legal placement of [Patient A]." Although Dr. Erickson suggests that authorization from Patient A's grandmother would be appropriate, this was never suggested to the Division or to the ALJ as grounds for her failure to provide the records. Moreover, it is clear from the rest of the letter to Patient A's mother that this was not the reason Dr. Erickson refused to provide the records to Patient A's mother. In fact, Dr. Erickson indicates to Patient A's mother that she will provide information related to her treatment of Patient A if Patient A meets with her in person.

syndrome and what she has learned during her treatment of Patient A and Patient A's mother; however, she never once expressed concerns that the authorization was not sufficient or legitimate. (*Id.*, pp. 4-5) She further asked a series of questions of Investigator Whaley regarding the Board, its composition and its ethical responsibilities. (*Id.*, p. 5) In a two and a half-page, single-spaced attachment to the letter drafted by Dr. Erickson, she stated, among other things, that she was informed by a member of the Psychology Board representative that she could provide a substantive response "in lieu" of the records. She further stated:

> I will assume that it *continues to be my responsibility to forward the records you have requested,* **since the reasons I am stating for not forwarding the records are not related to my objecting or refusing to submit the records**; but are instead related to the fact that I have been on vacation; I did not receive the message to return your call; I am undergoing treatment by medical doctors for an auto-immune disorder which has limited my time at work; and because of this disorder, and because it is very difficult for me to physically handle hard-copy paperwork with my hands, it has just taken me longer to review, copy, organize and compile all of this information. I have everything copied at this point, as Stephanie related to you a week ago. I have just had a series of prior commitments that have taken my time, and when I do have time to put into this task, it is physically difficult for me to go through the file for a long period of time. It has always been my intent to send these records, and you will receive them prior to the 20 days I have been given to respond to this Hearing Notice. In fact, I did request some additional time when I received the first request, and I was under the assumption that I had sent what had been requested; that the certified records could be replaced with a substantive response and supporting documentation.

(Attachment to Dr. Erickson's March 22, 2012 letter to Investigator Whaley, p. 2) (Italicized emphasis in original; bolded emphasis provided).

In addition, in a letter received by the ALJ on June 19, 2012 but dated May 31, 2012, Dr. Erickson states, "I will gladly send the records requested in this case. But I would also ask whether there [is] any purpose in doing so, when what I have already submitted continues to be misunderstood; when it would and should be clear to anyone knowledgeable about this disorder

that [what] was sent was completely appropriate and exactly what is needed to identify whether or not a false accusation has likely been made."

Further, a series of emails between counsel for the Division and Dr. Erickson between July 19 and July 25, 2012, which were forwarded to the ALJ, also demonstrates that Dr. Erickson repeatedly stated she would send the requested records. Her many reasons for not doing so never included a belief that the authorization was inadequate. In a July 25, 2012 email to the Division in response to the Division's settlement offer, the first term of which required that the requested records actually be provided, Dr. Erickson stated, "Certainly I can agree to number one, I have had these copies ready to mail for some time now; pending a response from the department as to where to mail them now that there is a hearing scheduled with a different focus."

Although some of the emails from Dr. Erickson forwarded to the ALJ mention Dr. Erickson's belief that Patient A's grandmother was the legal guardian, that belief is not offered to the Division or the ALJ as an excuse for not providing the information requested, and in fact, reflects a belief that such guardianship existed in the past rather than at the time the records were requested. In Dr. Erickson's November 29, 2011 email to Lydia Bridge, she states, "Any information regarding [Patient A's mother's] mental health issues have been provided to me by [Patient A's grandmother], who was the children's legal guardian when I first began seeing them." This email suggests that she knew early on, from November 29, 2011, that although the grandmother may have been the legal guardian when Dr. Erickson first began seeing Patient A, the grandmother was no longer the guardian at the time of the records request.[9]

[9] Patient A was eleven years old at the time Dr. Erickson received the October 9, 2011 authorization for release of Patient A's records executed by Patient A's mother. (Whaley Exhibit 1, attached to the Division's Reply Brief) Also, Patient A's mother informed Investigator Whaley that her mother (Patient A's maternal grandmother) was granted guardianship of Patient A in 2002 because at the time that Patient A was born in 2000, Patient A's mother was only sixteen years old and could not take care of Patient A on her own. In August of 2010, however, Patient A's mother and father received shared 50/50 physical and legal custody of Patient A. (Whaley Affidavit and Whaley Exhibit 3, attached to Division's Reply Brief)

Dr. Erickson's newly claimed defense for not sending the records is also severely undermined by the fact that she actually disclosed otherwise confidential information regarding Patient A to the Division, presumably relying on the authorization executed by Patient A's mother. The fact that she did so is consistent with an understanding that the authorization from Patient A's mother was legally adequate. For example, in a July 19, 2012 email to Division counsel, Dr. Erickson disclosed substantial information about her treatment of Patient A. (In that same email, she also requested certain information and witnesses be produced from the Division for the August 7, 2012 hearing.)

Likewise unconvincing is Dr. Erickson's assertion that she believed she could file a substantive response to the allegations in lieu of providing the records themselves. Dr. Erickson has stated at numerous points that her belief was based on DSPS employee Lydia Bridge telling her that she could submit a substantive response rather than the requested records. Dr. Erickson never provides proof of such a representation by Ms. Bridge and the record belies her assertion. Ms. Bridge was the DSPS employee who first made the request for information related to Patient A on November 1, 2011. In a November 29, 2011 email from Ms. Bridge to Dr. Erickson addressing Dr. Erickson's request for an extension of the November 22, 2011 due date for the requested information, Ms. Bridge stated, "If you decide to file a substantive response *as well*, and we receive it in time to distribute it to the screening panel, we will do so." (Division's Proposed Exhibit 2, attached to its July 26, 2012 Exhibits List) (Emphasis added) That same date, Dr. Erickson responded by email to Ms. Bridge, stating, "I was not aware that I could provide a substantive response, so thank you for providing this information to me." (*Id.*) In her Response to Allegations received by the ALJ on June 19, 2012, Dr. Erickson states, "I had been granted permission to submit a substantive response to the complaint filed against me. My

request on November 23, 2011 was for an extension of time in which to provide this substantive response. After being granted permission to send the substantive response in lieu of the client's entire file, never did I receive a communication stating that this had changed, and the records were being requested."

Dr. Erickson's assertions are contradicted by the record. It is clear from the correspondence from Ms. Bridge that Ms. Bridge authorized Dr. Erickson to submit a substantive response *in addition to*, not in lieu of, the requested records. However, even if Dr. Erickson somehow believed that Ms. Bridge authorized her to submit a substantive response in lieu of the records themselves during the time that Ms. Bridge was handling the request in 2011, Dr. Erickson had no reasonable basis for continuing to hold that belief when Investigator Whaley took over the request and repeatedly requested the records verbally and by letter, on February 20, 2012, March 7, 2012, March 15, 2012, March 16, 2012, March 21, 2012 and March 28, 2012.

Further, with regard to Dr. Erickson's past representations that she did not know where to send the requested records (a representation which she appears to have now abandoned), such alleged confusion is also not sustained by the record. In a letter from Investigator Whaley to Dr. Erickson dated February 20, 2012, Investigator Whaley makes it clear that Dr. Erickson is to send the records related to Patient A to Investigator Whaley, and she provides her address. The information and request is repeated in Investigator Whaley's letter to Dr. Erickson dated March 16, 2012.

Based on the foregoing, Dr. Erickson not only has failed to demonstrate adequate justification for her deliberate refusal to appear at the scheduled hearing, but has also failed to support the defenses she should have raised at hearing. Moreover, the Division would be prejudiced by an order denying its motion for default because the Division would have to again

prepare its case for hearing and again have its witnesses available to testify for hearing, when the Division had already done so for the August 7, 2012 hearing. Accordingly, Dr. Erickson has failed to demonstrate good cause as to why default should not be entered against her for not appearing at the scheduled hearing and, consistent with Wis. Admin. Code § SPS 2.14 and § HA 1.07, this case may be decided on the complaint and other evidence submitted by the Division.

Violation of the Wisconsin Administrative Code

As a preliminary matter, it is worth noting that the Division did not file a complaint against Dr. Erickson in this case for diagnosing parental alienation syndrome. Thus, Dr. Erickson's vast expenditure of time and paper regarding parental alienation syndrome was completely beside the point in both the Division's investigation and in these proceedings. The complaint filed by the Division was based solely on Dr. Erickson's failure to produce documents that the Board requested, in violation of Wis. Admin. Code § Psy 5.01(24), which states that the following constitutes prohibited unprofessional conduct: "Failure to respond honestly and in a timely manner to a request for information from the board or with any other request for information by the board. Taking longer than 30 days to respond creates a rebuttable presumption that the response is not timely."

The facts as set forth above demonstrate that, despite the repeated requests for records related to Patient A by Ms. Bridge and Investigator Whaley on behalf of the Board, Dr. Erickson never provided the documents requested. She is therefore in violation of Wis. Admin. Code § Psy 5.01(24).

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 requests that Dr. Erickson's license to practice psychology be suspended for an indefinite period, not less than 90 days, and that she be required to comply with certain conditions before the suspension would be lifted. The conditions recommended by the Division are that Dr. Erickson produce the records the Division has been requesting and that the 90-day period not commence until the Division agrees that it has received a complete, true and legible certified copy of Dr. Erickson's records regarding Patient A. The Division further requests that the suspension of Dr. Erickson's license continue until she has paid the costs of this proceeding as ordered, and if the payment is by check, until her check has cleared the banks.

Finally, the Division requests that if the suspension of Dr. Erickson's license is lifted, her license should be limited by the condition that she practice only under the supervision of a licensed psychologist acceptable to the Board and that she herself supervise no other psychologist, therapist, counselor, social worker or mental health care provider of any description. As justification for this request, the Division asserts that Dr. Erickson "has demonstrated that she is not willing to meet her own professional obligations, and there is no reason to believe that she is able or willing to instill respect for those obligations in others while flouting them herself." (Division's Argument and Recommendation for Discipline, p. 4)

With the exception of the proposed requirement that Dr. Erickson only practice under the supervision of a licensed psychologist acceptable to the Board, the Division's proposed

discipline is appropriate based on the facts of this case and purposes of discipline articulated in *Aldrich.*

The misconduct proven in this case is serious. Dr. Erickson's failure to provide the requested records has obstructed the investigation of alleged misconduct and frustrated the Board's regulation of the profession and its ability to determine whether Dr. Erickson is practicing in a safe and competent manner. Dr. Erickson has been obstructing the investigation in this matter for over a year by refusing to produce the records and has been thwarting the disciplinary proceedings by disregarding the ALJ's orders, including by failing to appear for the hearing and prior conferences. Suspension for a minimum of 90 days with the requirement that Dr. Erickson produce the requested records and pay the costs of these proceedings will serve to deter others from ignoring requests made by the Board to the licensees it regulates, while also providing a vehicle for Dr. Erickson's rehabilitation.

Should the suspension of Dr. Erickson's license be lifted, it is also appropriate to limit Dr. Erickson's license to prevent her from supervising any psychologist, therapist, counselor, social worker or mental health care provider of any description, or anyone in training for such professions. Dr. Erickson's conduct demonstrates an extreme disregard for the obligations of her profession and a profound indifference to the Board and to the disciplinary proceedings against her. I cannot conclude with any confidence that Dr. Erickson will be able or willing to instill the proper respect for these obligations in others.

I do not find, however, that a requirement that Dr. Erickson practice only under the supervision of a Board-approved psychologist is warranted. The conduct proven here is a failure to produce records requested by the Board. This conduct does not in itself demonstrate that she poses a risk to the safety or well-being of her patients, such that supervision is required. If Dr.

Erickson continues to flaunt her obligations to the Board by failing to produce the requested records or pay the costs of these proceedings, she will not have the suspension on her license lifted and will not be able to legally practice her profession. I conclude that this is a sufficient incentive for her to cooperate with the Board, and that day-to-day supervision of her psychology practice is not required based on the facts of this case.

Costs

The Division requests that Respondent be ordered to pay the full costs of its investigation and prosecution of these proceedings pursuant to Wis. Stat. § 440.22(2) and Wis. Admin. Code § SPS 2.18. In *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, LS 0802183 CHI (Aug. 14, 2008), 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 licensees, 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; and
> 7. Any other relevant circumstances.

For many of the same reasons delineated in the *Buenzli-Fritz* decision, Dr. Erickson should be assessed the full amount of recoverable costs. As stated above, Dr. Erickson's conduct

was serious, impeding an investigation of alleged misconduct and frustrating the Board in its duty to oversee the profession it regulates. Dr. Erickson was noncompliant in these proceedings, refusing to participate in the scheduled hearing and failing to show at two other prior prehearing conferences. There is no argument that certain factual findings were investigated and litigated unnecessarily and, given the program revenue nature of the Department, fairness dictates imposing the costs of these disciplinary proceedings on Dr. Erickson and not on fellow members of her profession who have not engaged in such conduct.

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

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter pursuant to Wis. Stat. § 455.09.

2. Dr. Erickson defaulted in these proceedings pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07 and as a result, the allegations contained in the Division's complaint and other evidence are accepted as true.

3. Dr. Erickson engaged in unprofessional conduct as defined by Wis. Admin. Code § Psy 5.01(24) by failing to respond to a request from the Board that she provide the records of her treatment of Patient A.

4. The costs of the investigation and disciplinary proceedings in this matter are properly imposed on Dr. Erickson pursuant to Wis. Stat. § 440.22(2) and Wis. Admin. Code § SPS 2.18.

ORDER

1. Dr. Erickson's license is hereby SUSPENDED for an indefinite period.

2. Dr. Erickson may not file a petition to lift the suspension until the expiration of 90 days from the date on which the Division notifies Dr. Erickson that it has received the records of

Patient A as requested in Investigator's letter to Dr. Erickson dated February 20, 2012 and that the Division accepts Dr. Erickson's certification of the records as a true, accurate, complete and legible copy of Dr. Erickson's records for Patient A.

3. The suspension of Dr. Erickson's license will not be lifted until Dr. Erickson has paid the full costs of this proceeding, pursuant to Wis. Stat. § 440.22, in cash or until Dr. Erickson's check has cleared all relevant banks.

4. If the suspension of Dr. Erickson's license is lifted, her license is limited by the condition that she may not supervise any other psychologist, counselor, social worker, therapist or mental health practitioner of any description, nor may she supervise any person who is in training to become a psychologist, counselor, social worker, therapist or mental health practitioner of any description.

5. The full costs of this proceeding shall be assessed against Dr. Erickson in accordance with Wis. Admin. Code § SPS 2.18 and payment of such costs shall be made payable to the Wisconsin Department of Safety and Professional Services and sent to the Department Monitor at the address below:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935
Fax (608) 266-2264

6. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Dr. Erickson's license. The Board, in its discretion, may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the

event Dr. Erickson fails to timely submit payment of the costs and forfeiture as ordered and as set forth above, Dr. Erickson's license (no. 57-2256) may, in the discretion of the Department, be SUSPENDED, without further notice or hearing, until Dr. Erickson has complied with payment of the costs and forfeiture.

7. The ordered terms of this decision are effective the date the Board signs the final decision and order in this matter.

Dated at Madison, Wisconsin on November 26, 2012.

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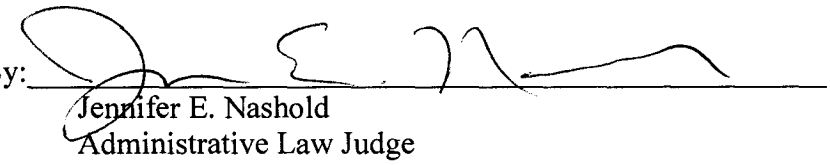
By: 
Jennifer E. Nashold
Administrative Law Judge