

## 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 **CHARON SPAIN**, Respondent

FINAL DECISION AND ORDER  
Order No. 0002320

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**Division of Legal Services and Compliance Case No. 12 MMA 003**

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 28<sup>th</sup> day of February, 2013.

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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 **CHARON SPAIN**, Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. SPS-12-0069

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**Division of Legal Services and Compliance<sup>1</sup> Case No. 12 MMA 003**

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

Charon Spain  
316 South 10th Avenue  
Walla Walla, WA 99362

Department of Safety and Professional Services, Division of Legal Services and Compliance, by

Attorney Laura M. Varriale  
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  
Wisconsin Department of Safety and Professional Services  
P.O. Box 8935  
Madison, WI 53708-8935

**PROCEDURAL HISTORY**

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Charon Spain (Respondent) on September 6, 2012, alleging that Respondent's mixed martial arts professional contestant license was subject to disciplinary action pursuant to Wis. Stat. § 444.11 and Wis. Admin. Code § SPS 195.02(14). Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09, and failed to appear at the telephonic prehearing conference held before the Division of Hearings and

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<sup>1</sup> The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

Appeals on October 11, 2012. At that prehearing conference, counsel for the Division moved for default. The administrative law judge (ALJ) issued a Notice of Default on October 11, 2012, finding Respondent in default.

## **FINDINGS OF FACT**

### **Facts Related to Alleged Violations**

Findings of Fact 1-4 are taken from the Complaint filed by the Division in this matter.

1. Respondent Charon Spain is licensed in the State of Wisconsin as a Mixed Martial Arts Professional Contestant, having license number 277-186, first issued on May 3, 2012 and current through May 16, 2013. Respondent's most recent address on file with the Department is 316 South 10th Ave., Walla Walla, WA 99362.

2. Respondent entered into a contract to appear in a fight for North American Fighting Championships scheduled on May 4, 2012.

3. The registration and weigh-in was scheduled for May 3, 2012. The contract specified Respondent was to arrive at RoufuSport Academy, located at 321 N. 76<sup>th</sup> St., Milwaukee, WI, no later than 6:00 p.m.

4. Respondent failed to arrive at his report time and instead arrived approximately 30 minutes late.

### **Facts Related to Default**

5. The Complaint and Notice of Hearing in this matter were served on Respondent on September 6, 2012, by both certified and regular mail, to his address on record with the Department, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing informed Respondent: "If you do not provide a proper Answer within 20 days, you will be found to be in default, and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Department may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing." According to a USPS Track & Confirm receipt filed by the Division, the Complaint and Notice of Hearing was delivered to Respondent by certified mail on September 10, 2012.

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

7. The ALJ scheduled a telephone prehearing conference for October 11, 2012 at 11:00 a.m. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the telephone number at which he could be reached for the conference to the ALJ no later than October 8, 2012. The Notice further informed Respondent: **"A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent."**

8. Respondent failed to provide a telephone number for the prehearing conference.

9. On October 11, 2012, at approximately 11:00 a.m., the ALJ contacted counsel for the Division, who provided the ALJ with the telephone number for Respondent which the Division had on file. The ALJ attempted to reach Respondent at the telephone number provided but was unable to get through to the Respondent and could not even leave a message. The Department moved for default.

10. On October 11, 2012, the ALJ issued a Notice of Default which was sent to Respondent at his address on file with the Department and which found Respondent to be in default. Respondent failed to respond to the Notice of Default.

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **Default**

Respondent has defaulted in this proceeding pursuant to Wis. Admin. Code § SPS 2.14 by failing to appear at the telephonic prehearing conference held in this matter and by failing to file an Answer to a Complaint within 20 days from its service as required by Wis. Admin. Code § SPS 2.09. Therefore, pursuant to Wis. Admin. Code §§ HA 1.07(3)(b) and SPS 2.14, Respondent has admitted to the allegations of the Complaint.

### **Violation of the Wisconsin Statutes and Administrative Code**

As described in the Complaint and incorporated into the Findings of Fact above, Respondent entered into a contract to appear in a fight for the North American Fighting Championships scheduled on May 4, 2012. The registration and weigh-in were scheduled for May 3, 2012, and the contract specified that Respondent was to arrive for the weigh-in no later than 6:00 p.m. Respondent failed to arrive at his report time for weigh-in and instead arrived approximately 30 minutes late.

Respondent's conduct constitutes a violation of Wis. Admin. Code § SPS 195.02(14), which provides: "Contestants that fail to arrive at their report time for weigh-in will be subject to disciplinary action of a suspension of up to 60 days and an assessment of costs and forfeitures by the department." As a result of this violation, Respondent is subject to discipline pursuant to Wis. Stat. § 444.11.

### **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 Respondent be reprimanded and that a forfeiture in the amount of \$50 be imposed. Based on the facts of this case and purposes of discipline articulated in *Aldrich*, the discipline recommended by the Division is appropriate.

## Costs

The Division requests that Respondent be ordered to pay the full costs of its investigation and prosecution of these proceedings. 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.

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.

For many of the same reasons delineated in the *Buenzli-Fritz* decision, Respondent should be assessed the full amount of recoverable costs. 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, fairness dictates imposing the costs of these disciplinary proceedings on Respondent, and not on fellow members of Respondent's 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**

For the reasons stated above, IT IS HEREBY ORDERED that:

1. Respondent Charon Spain (license number 186-277) is REPRIMANDED.
2. Within 90 days of the effective date of this Order, Respondent shall pay a FORFEITURE in the amount of \$50.
3. Full costs shall be assessed against Respondent in accordance with Wis. Admin. Code § SPS 2.18.
4. Payment of forfeiture and 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**
5. 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 Respondent's license. The Department 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 Respondent fails to timely submit payment of the costs and forfeiture as ordered and as set forth above, Respondent's license may, in the discretion of the Department, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the costs and forfeiture.
6. The ordered terms of this decision are effective the date the Department signs the final decision and order in this matter.

Dated at Madison, Wisconsin on January 25, 2013.

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