

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE SOCIAL WORKER SECTION OF THE
MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING, AND
SOCIAL WORK EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER **ORDER 0002975**
WITH VARIANCE

CHARLES A. KILEY III,
RESPONDENT.

DHA Case No. SPS-12-0075
DLSC Case No. 12 SOC 050

BACKGROUND

On February 21, 2013, Administrative Law Judge Jennifer Nashold, State of Wisconsin, Division of Hearings and Appeals, issued a Proposed Decision and Order (PDO) in the above referenced matter. The PDO was mailed to all parties. No objections to the PDO were filed. On February 4, 2014, the Social Worker Section of the Marriage and Family Therapy, Professional Counseling, and Social Work Examining (Section) met to consider the merits of the PDO. The Section voted to approve the PDO with variance. The PDO is attached hereto and incorporated in its entirety into this Final Decision and Order with Variance (Order).

VARIANCE

Pursuant to Wis. Stat. §§ 440.035(1) and 457.26, the Section is the regulatory authority and final decision maker governing disciplinary matters of those credentialed by the Section. The matter at hand is characterized as a class 2 proceeding pursuant to Wis. Stat. § 227.01(3). The Section may make modifications to a PDO, a class 2 proceeding, pursuant to Wis. Stat. § 227.46(2).


In the present case, the Section adopts the PDO in its entirety except for amendments to the sections titled, "**Appropriate Discipline**" and "**ORDER**" found on pages five through eight of the PDO. The section titled "**Appropriate Discipline**" is amended as follows. On page six, following the last paragraph of this section, the following paragraph is added:

The Respondent's license is scheduled to expire on February 28, 2013. Accordingly, this decision might not take effect until after the Respondent's license has expired. In that event, there will not be a license to revoke. However, the Respondent retains a right to renew his license for a period of five years following expiration. In order to serve the three purposes of discipline as mentioned above, it is appropriate to revoke the right to renew per Wis. Stat. §§ 440.08(4) and 457.26.

The section titled "ORDER" is amended as follows. On page seven, number 1 (one) is amended to read:

1. The clinical social worker license of Respondent Charles A. Kiley III, is REVOKED and/or the right to renew is REVOKED, pursuant to Wis. Stat. §§ 440.08(4) and 457.26.

Dated at Madison, Wisconsin this 17th day of February, 2014.

By: 
A Member of the Section
Social Worker Section of the 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 **CHARLES A. KILEY III**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-12-0075
ORDER 0002975

Division of Legal Services and Compliance Case No. 12 SOC 050

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

Charles A. Kiley, III
3949 N. Downer Avenue
Shorewood, WI 53211

Social Worker Section of the
Marriage and Family Therapy, Professional Counseling, and Social Work
Examining Board
P.O. Box 8935
Madison, WI 53708-8935

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

Attorney Lydia Thompson
Department of Safety and Professional Services
Division of Legal Services and Compliance
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 Notice of Hearing and Complaint against Respondent Charles A. Kiley, III, alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 457.26(2)(a) and (h), and Wis. Admin. Code §§ MPSW 20.02(4), 8.02(1), and 8.02(3). 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 on January 7, 2013, and failed to appear at the prehearing conference.

At the prehearing conference, counsel for the Division moved for default and the Administrative Law Judge (ALJ) found Respondent to be in default. A Notice of Default was issued on January 29, 2013.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of fact 1-18 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Charles A. Kiley, III, is licensed in the State of Wisconsin as a clinical social worker, license number 123-606. This license was first granted to Respondent on August 18, 1993, and expires on February 28, 2013.

2. Respondent's most recent address on file with the Department is 3949 N. Downer Avenue, Shorewood, Wisconsin 53211.

3. On March 3, 2011, Respondent completed an application to renew his Licensed Clinical Social Worker credential in the state of Wisconsin. In doing so, Respondent certified as follows: "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 conducted a continuing education audit for the 2009-2011 biennium 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. In July of 2011, renewal staff sent Respondent a letter informing him of the audit and requested that he submit an attendance table listing all the continuing education hours ("CEH") he completed during the 2009-2011 biennium, with proof of attendance for these hours.

6. Along with a letter dated July 29, 2011, Respondent submitted an attendance table via his personal e-mail account showing that he had completed two continuing education courses totaling 33.50 CEH during the 2009-2011 biennium. Respondent noted that he had lost the certificates of completion for the continuing education courses and was unable to provide them. Respondent noted that he had partially retired from the practice of social work in 2009 due to health issues, but had recently returned to the practice of social work. Respondent requested that he be allowed to remain licensed.

7. On August 18, 2011, renewal staff sent an e-mail to Respondent's personal account requesting that by September 1, 2011, Respondent submit documentation to verify that he had completed 30 CEH, including four hours of continuing education in the area of social work ethics and boundaries.

8. Respondent did not comply or respond to this request for documentation. As a result, Legal Services and Compliance staff opened an investigation in this matter on February 10, 2012.

9. On March 28, 2012, the Division sent a letter to Respondent via first class mail and e-mail 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 CEH during the 2009-2011 biennium. This letter allowed Respondent an opportunity to submit the appropriate documentation by April 16, 2012.

10. Respondent did not comply or respond to this second request for documentation.

11. On May 28, 2012, the Division sent a letter to Respondent via first class mail requesting that Respondent submit the appropriate documentation by June 13, 2012.

12. Respondent did not comply or respond to this third request for documentation.

13. On July 5, 2012, the Division sent a letter to Respondent via certified mail (#719 9008 9111 3772 4915) and first class mail requesting that Respondent submit the appropriate documentation by July 19, 2012.

14. On July 30, 2012, the post office returned the letter that had been sent to Respondent via certified mail (#719 9008 9111 3772 4915) as unclaimed.

15. Respondent did not comply or respond to this fourth request for documentation.

16. On October 25, 2012, the Division attempted to contact Respondent using the most recent telephone number on file with the Department. The Division left a voicemail message regarding this matter with a request for Respondent to return the call. Respondent did not return the call.

17. On October 25, 2012, the Division sent a letter to Respondent via first class mail and e-mail requesting that Respondent submit the appropriate documentation by November 2, 2012.

18. Respondent did not comply or respond to this fifth request for documentation.

Facts Related to Default

19. The Complaint and Notice of Hearing in this matter were served on Respondent on November 19, 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 and 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 Section 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."

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

21. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for January 7, 2013. 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 January 3, 2013. The Notice advised Respondent: "A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against respondent."

22. Respondent failed to provide a telephone number at which he could be reached for the prehearing conference and failed to appear at the prehearing conference.

23. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3).

24. On January 29, 2013, the ALJ issued a Notice of Default which found Respondent to be in default. Respondent did not file a response to the Notice of Default.

25. On February 15, 2013, the Division filed a recommended Proposed Decision and Order with the ALJ, along with supporting affidavits. Respondent did not file a response.

DISCUSSION AND CONCLUSIONS OF LAW

Violations of Wisconsin Statutes and Administrative Code

Because Respondent failed to provide an Answer to the Complaint filed against him and failed to appear at the January 7, 2013, prehearing conference or provide a telephone number at which he could be reached, 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) further provides: "If a respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate. . . ."

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 the Finding of Fact, occurred.

The facts alleged in the Complaint establish that Respondent failed to complete at least 30 Section-approved continuing education hours in the 2009-2011 biennium, which constitutes a violation of Wis. Admin. Code § MPSW 8.02(1). Respondent used fraud or deception in a renewal application for a credential by certifying that he completed the required 30 Section-approved CEH in the 2009-2011 biennium, when he in fact had failed to do so. This conduct constitutes a violation of Wis. Stat. § 457.26(2)(a) and (h) and Wis. Admin. Code § MPSW 20.02(4). Respondent's deception was highlighted when he failed to deliver to the Section original documents that show attendance at the continuing education programs for which credit is claimed. The failure to deliver the original documents constitutes a violation of Wis. Admin. Code § MPSW 8.02(3).

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” or “(h) Violated this chapter or any rule promulgated under this chapter.”

Wisconsin Admin. Code § MPSW 8.02 provides, in relevant part:

(1) Unless granted a postponement or waiver under sub. (7), every social worker, advanced practice social worker, independent social worker, and 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.

Pursuant to Wis. Admin. Code § MPSW 20.02, “Unprofessional 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.”

Respondent’s violations of Wis. Stat. § 457.26(2)(a) and (h) and Wis. Admin. Code §§ MPSW 8.02(1), 8.02(3), and 20.02(4) subject him to discipline under Wis. Stat. § 457.26(2)(a) and (h).

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’s license be revoked for the conduct described above and that the full costs of the investigation and disciplinary proceedings be imposed on Respondent. Based on the facts of this case and the three purposes of discipline articulated in *Aldrich*, revocation is appropriate.

Clinical social workers must complete 30 CEH during each biennium, 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. The ability to meet professional education credits is a basic requirement of licensure.

In his March 3, 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. Yet, during the time period from July 2011 through October 25, 2012, Division staff made at least 6 attempts to contact Respondent to request that he submit proof of completion of the required continuing education hours. Respondent failed to submit any proof and did not respond to the Department, except only once in a letter dated July 29, 2011, where he alleged that he had lost the certificates of completion for the continuing education courses and was unable to provide them. After this time, Respondent had numerous opportunities to obtain and provide to the Department documentation that he had completed the 30 hours of CEH, but failed to do so.

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. Respondent's actions and disregard for the law exemplify the need for discipline in this case.

Respondent's lack of participation in these proceedings is indicative that he has not been rehabilitated and does not take these proceedings or his license seriously. The significant discipline imposed serves to deter others from making untruthful statements in their license applications. It also serves to deter others from failing to comply with their professional education requirements and with the Section's requests for documentation.

Costs

The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings prior to the Department's consideration of any future application by Respondent for any credential. 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 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; 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. 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. His conduct 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, fairness dictates imposing the costs of these disciplinary proceedings on Respondent, and not on fellow members of his profession who have not engaged in such conduct.

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

ORDER

Accordingly, IT IS ORDERED that:

1. The clinical social worker license of Respondent Charles A. Kiley, III is REVOKED, pursuant to Wis. Stat. § 457.26.

2. 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

3. The terms of this Order are effective the date the Final Decision and Order is signed by the Section.

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Charles A. Kiley, III.

Dated at Madison, Wisconsin on February 21, 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