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

In the Matter of the Disciplinary Proceedings
Against **DEANNE WEILER**, Respondent

FINAL DECISION AND ORDER

Order No. 0003366

Division of Legal Services and Compliance Case No. 13 CPC 010

The State of Wisconsin, Marriage and Family Therapy, Professional Counseling and Social Worker 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 Worker 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 8 day of September, 2014.

Member
Wisconsin Marriage and Family Therapy,
Professional Counseling and
Social Worker Examining Board



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Disciplinary Proceedings Against
DEANNE WEILER, Respondent

DHA Case No. SPS-14-0009
DLSC Case No. 13 CPC 010

PROPOSED DECISION AND ORDER

0003366

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

Deanne Weiler
W2294 West Bay Road
East Troy, WI 53120

Wisconsin Marriage and Family Therapy, Professional Counseling and
Social Worker Examining Board
Professional Counselors Section
P.O. Box 8366
Madison, WI 53708-8366

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

Attorney James E. Polewski
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a formal Complaint on Respondent Deanne Weiler. The Complaint alleged that Weiler engaged in unprofessional conduct as defined by Wis. Admin. Code § MPSW 20.02(19) by practicing professional counseling without a license, in violation of Wis. Stat. § 457.04(6), and also engaged in unprofessional conduct as defined by Wis. Admin. Code § MPSW 20.02 (intro) by obstructing the Board's investigation of the allegation that she was practicing without a license.

The Division served Weiler on February 3, 2014 by sending a copy of the Notice of Hearing and Complaint to her last known address on file with the Department.

Following expiration of the 20-day time period in which to file an Answer to the Complaint, a prehearing conference was scheduled before the undersigned administrative law judge (ALJ) for March 11, 2014 at 1:00 p.m. The Notice was returned to the Division of Hearings and Appeals (DHA) on March 5, 2014 as undeliverable; therefore, on March 6, 2014, the Notice was emailed to Weiler. On March 10, 2014, Weiler emailed the DHA indicating that she had just received the Notice that day and would forward it to her attorney. She was informed by DHA to have her attorney file a Notice of Appearance prior to the March 11, 2014 prehearing conference. On the date of the prehearing conference, March 11, 2014, at 10:30 a.m., Weiler emailed the DHA requesting that the prehearing conference be rescheduled for the week of March 17, 2014 to allow communication with her attorney. The ALJ informed the parties by email that the conference would be scheduled for March 20, 2014 at 11:30 a.m., and on March 11, 2014, issued a Notice of Rescheduled Telephone Prehearing Conference rescheduling the prehearing conference to March 20, 2014.

At the designated time on March 20, 2014, the ALJ contacted Weiler for the prehearing conference but she did not answer her telephone. The ALJ left a voicemail for Weiler to contact her but Weiler did not do so. The ALJ reconvened the telephone conference with Division counsel, who moved for default based on Weiler's failure to file an Answer to the Complaint and failure to appear for the prehearing conference. The ALJ granted the motion and issued a Notice of Default and Order on March 20, 2014.

On the evening of March 20, 2014, after normal business hours, Weiler left a voicemail for the ALJ stating that she did not receive notice of the March 20, 2014 rescheduled conference and that at the time of the conference, she was at a funeral. Despite the fact that Weiler had been informed of the rescheduled March 20, 2014 conference by email at an email address she had been using to correspond with DHA and had been issued a Notice with the rescheduled date and time at the address on file with the Department and the DHA, the ALJ again agreed to reschedule the prehearing conference to April 1, 2014.

On March 21, 2014, the Notice of Rescheduled Telephone Prehearing Conference was returned to DHA by the U.S. Postal Service as not deliverable. The ALJ notified the parties of this fact by email and requested a current address for Weiler, which she provided on March 25, 2013. A Notice was again sent to the parties setting the additional telephone conference for April 1, 2014.

On the weekend prior to the Tuesday, April 1, 2014 rescheduled prehearing conference, Weiler again left a voicemail for the ALJ indicating that her mother had just passed away and that the viewing was April 1, 2014. Weiler emailed a copy of her mother's obituary to the ALJ and Division counsel. The prehearing conference was again rescheduled to April 8, 2014.

Following the April 8, 2014 prehearing conference, the ALJ issued a Scheduling Order and Order Vacating Default Order which vacated the order of default, set a deadline of April 21,

2014 for Weiler to file an Answer to the Complaint, and set a hearing date of June 3, 2014 as well as deadlines for the filing of exhibit and witness lists and exhibits.

Weiler filed her Answer to the Complaint on April 21, 2014. Neither party filed witness or exhibit lists or exhibits. In a letter dated May 16, 2014, the Division indicated that it would instead “stand on the pleadings and record in this matter.” A hearing was held on June 3, 2014, at which Weiler and counsel for the Division appeared. Weiler admitted that she practiced without a license as set forth in the Division’s Complaint but denied the allegation that she obstructed the Division’s investigation by failing to respond to requests for information.

FINDINGS OF FACT

1. Respondent Deanne Weiler, Ph.D. (DOB 3/13/1962) was licensed to practice professional counseling in the State of Wisconsin, having license number 1736-125, first issued on March 3, 1995 and expiring on February 28, 2011. Respondent retains the right to renew her license through February 28, 2016. (Complaint; Answer)

2. On February 28, 2011, Weiler’s license expired and renewal was denied due to tax delinquency. (Complaint; Answer; Hrg. Tr., pp. 7-9)

3. Pursuant to Wis. Stat. § 457.04(6), a license is required to practice professional counseling.

4. On May 5, 2012, as counselor for Patient A and his parents, and in her capacity as the individual who provided counseling to the family, Weiler submitted a recommendation on a placement study to Waukesha County Circuit Court. (Complaint; Answer; Hrg. Tr., pp. 7-9)

5. On April 1, 2013, the Division received a complaint alleging that Weiler was practicing psychotherapy without a license to do so. (*Id.*)

6. Weiler admitted at the hearing held on June 3, 2014 that she practiced professional counseling without a license as alleged by the Division, in violation of Wis. Stat. § 457.04(6). (Hrg. Tr., pp. 7-9)

DISCUSSION

Burden of Proof

The burden of proof in disciplinary proceedings is on the Division to show by a preponderance of the evidence that the events constituting the alleged violations occurred. Wis. Stat. § 440.20(3); *see also* Wis. Admin. Code § HA 1.17(2). To prove by a preponderance of the evidence means that it is “more likely than not” that the examined action occurred. *See State v. Rodriguez*, 2007 WI App. 252, ¶ 18, 306 Wis. 2d. 129, 743 N.W.2d 460, citing *United States v. Sauter*, 60 F.3d 270, 280 (7th Cir. 1995).

Violations

Wisconsin Stat. § 457.04(6) prohibits practicing professional counseling without a license. At the hearing held in this matter, Weiler admitted that she practiced professional counseling without a license as alleged in the Complaint. Thus, the Department has met its burden of establishing that a violation of Wis. Stat. § 457.04(6) occurred. This conduct also constituted unprofessional conduct as defined by Wis. Admin. Code § MPSW 20.02(19), which defines unprofessional conduct to include “[v]iolating any of the provisions of ch. 457, Stats.”

With regard to the “obstruction” allegation, the Division’s Complaint alleged the following:

- On July 22, 2013, the Division emailed Weiler requesting a response to the allegations; however, Weiler did not respond.
- On August 29, 2013, the Division sent a letter by first class mail to Respondent at her address of record; however, the Division did not receive a response and the letter was not returned.
- On October 23 and 25, 2013, an investigator for the Division left messages on Weiler’s “confidential voice mail box” asking for a return call to discuss her lapsed license and her unlicensed practice as a professional counselor; however, Weiler did not return either call.

The Division has the burden of proof and failed to submit any evidence, either documentary or testimonial, with regard to these alleged facts. Instead, the Division stated in its May 16, 2014, letter that it would “stand on the pleadings and record in this matter.” At the hearing, the Division again reiterated that it was “standing on the pleadings,” arguing that Weiler did not deny the allegation in her Answer to the Complaint, and that her actions during the pendency of this case before the ALJ were consistent with the allegations in terms of obstructing and failing to respond. The Division further explained that it was moving for judgment on the pleadings. The Division had not filed a motion for judgment on the pleadings prior to the evidentiary hearing.

Weiler denied the obstruction allegation under oath and testified, “I responded to the communications that I received.” (Hrg. Tr., pp. 8-9) She further indicated that emails may not have come through to her and that she could not respond to anything she had not received. (Hrg. Tr., p. 9) She also testified that it had been brought to her attention that mail had been sent to a previous address¹ and was not forwarded to her. She indicated that she did not receive the mail as alleged in the Complaint. (Hrg., Tr., p. 11)

The Division did not meet its burden of establishing its “obstruction” allegation. It presented no evidence at the hearing to establish the facts which form the basis for the violation. Instead, the Division relied on the pleadings in this matter, noting that Weiler did not deny the

¹ Weiler was presumably referring to the Notices in this proceeding which were sent to her prior address. I note that it was Weiler’s responsibility to keep the Department and DHA informed of her current address.

obstruction allegation in her Answer. If the Division wished to bring a motion for judgment on the pleadings, it should have done so prior to hearing so that Weiler could file a response and the ALJ could have ruled on such a motion prior to hearing. Instead, the case was set for an evidentiary hearing on the merits. Weiler attended the evidentiary hearing in Madison, presumably from her address in East Troy, and denied this particular allegation while admitting to the Division's other allegation of practicing without a valid license.

Because the Division failed to present any evidence, much less a preponderance of the evidence, to support its obstruction allegation, I cannot find, based on this record, that the violation occurred.²

Discipline

Weiler's license to practice professional counseling in the State of Wisconsin was first issued on March 3, 1995 and expired on February 28, 2011. She retains the right to renew her license through February 28, 2016, upon payment of a fee. See Wis. Stat. § 440.08(3). The Division requests that Weiler's right to renew her license upon payment of a fee be indefinitely suspended and that she be prohibited from petitioning the Professional Counselors Section of the Wisconsin Marriage and Family Therapy, Professional Counseling and Social Worker Examining Board (Section) for reinstatement until she pays the costs of these proceedings. Weiler did not specifically object to the Division's recommendation regarding discipline but only objected to the Division's recommendation that full costs be imposed.

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). I conclude that these objectives are best served by the Division's recommendation of indefinite suspension of the right to renewal upon payment of a fee.

On February 28, 2011, Weiler's renewal was denied due to tax delinquency. Nevertheless, over a year later, on May 5, 2012, Weiler practiced professional counseling while unlicensed, counseling Patient A and his parents and submitting a recommendation on a placement study to Waukesha County Circuit Court. Weiler has admitted she practiced professional counseling without a license. In practicing without a valid credential, Weiler attempted to avoid the oversight that professional licensing provides. The purpose of the licensing scheme is the protection of the public health, safety and welfare, to the public's benefit. *Gilbert v. Medical Examining Board*, 119 Wis. 2d 168, 349 N.W. 2d 68 (1984). The public should be protected from those who engage in professions for which they are not credentialed as there is no assurance they meet the qualifications to practice. Weiler should not be permitted to be licensed and continue to practice simply by payment of a fee; rather, the Section which

² Although not a basis for my determination in this case, I also note that the Division's "obstruction" allegation is based solely on what the Division terms the "introduction" to Wis. Admin. Code § MPSW 20.02, which states only: "Unprofessional conduct. 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. . . ." A list of conduct is then provided, which does not include obstructing or refusing to answer questions from the Department. It would have been preferable to have additional information regarding the legal basis for the contention that a failure to respond constitutes unprofessional conduct.

regulates her profession must be satisfied that she understands the seriousness of her conduct and will meet the standards of her profession in the future. This will serve to protect the public, rehabilitate Ms. Weiler, and deter others from engaging in similar conduct.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. With respect to imposition of costs, factors to consider include: (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 prosecutor; (4) the cooperation of the respondent; (5) any prior discipline; and (6) the fact that the Department is a program revenue agency, funded by other licensees. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI).

With respect to the first factor, the Division alleged two violations but only proved one, which was only proved through Weiler's admission. Regarding the second factor, I note that the conduct was serious but that the facts do not establish any harm to the public other than practicing without a valid credential, and that the conduct involved only one family rather than multiple patients. The Division is seeking serious discipline, indefinite suspension of the right to renew the license upon payment of a fee, but did not request that the suspension be in effect for any minimum period of time. Rather, the Division's recommendation allows Weiler to petition the Section for reinstatement at any time following payment of the costs ordered in this proceeding.

Regarding the fourth factor, although petitioner did request delays and missed one of the prehearing conferences set in this matter, she did cooperate by filing an Answer, attending the prehearing conference, and traveling to Madison for the hearing, where she admitted one of the violations alleged. I also note that although Weiler's license was not renewed in 2011 due to tax delinquency, she has no other disciplinary proceedings against her. The only factor that operates unequivocally in the Division's favor, which it always does, is the fact that any costs of these proceedings not borne by Weiler will be borne by other members of her profession.

In light of all of the factors set forth above, I conclude that it is appropriate to require Weiler to pay seventy-five percent of the costs of these proceedings.

CONCLUSIONS OF LAW

1. The Department met its burden of establishing by a preponderance of the evidence that Weiler practiced professional counseling without a valid credential, in violation of Wis. Stat. § 457.04(6), which also constituted unprofessional conduct as defined by Wis. Admin. Code § MPSW 20.02(19).

2. The Department did not meet its burden of establishing by a preponderance of the evidence that Weiler violated Wis. Admin. Code § MPSW 20.02 (intro) by obstructing an investigation.

3. The Discipline set forth in the Order section below is warranted pursuant to the factors delineated in *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

4. Imposition of seventy-five percent of the costs of these proceedings on Weiler is warranted under *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI).

ORDER

Accordingly, IT IS HEREBY ORDERED:

1. The right of Deanne Weiler to renew her license to practice as a professional counselor in the State of Wisconsin upon payment of a fee pursuant to Wis. Stat. § 440.08(3) is INDEFINITELY SUSPENDED, and she may only petition the Section for reinstatement of her license after she pays the costs of these proceedings as set forth in the paragraph below.

2. Within 120 days from the date of the Final Decision and Order in this matter, Weiler shall pay seventy-five percent of the 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 7190
Madison, WI 53707-7190**

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

Dated at Madison, Wisconsin on June 17, 2014.

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