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**Before the
State Of Wisconsin
Examining Board of Marriage and Family Therapy, Professional
Counseling and Social Work Examining Board**

In the Matter of the Disciplinary Proceedings
Against Janet Patek, Respondent

FINAL DECISION AND ORDER

Order No. 0003839

Division of Legal Services and Compliance Case No. 14 SOC 190

The State of Wisconsin, Examining Board of Marriage and Family Therapy, Professional Counseling and Social Work Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Examining Board of Marriage and Family Therapy, Professional Counseling and Social Work Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 18th day of March, 2015.


Member

Examining Board of 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 **JANET E. PATEK**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-14-0077

Division of Legal Services and Compliance Case No. 14 SOC 190

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

Janet E. Patek
1050 Symphony Blvd.
Neenah, WI 54956

Wisconsin Marriage and Family Therapy, Professional Counseling and Social Work
Examining Board, Social Work 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 SUMMARY

The above-captioned matter is before this tribunal for decision following a motion for default filed by the Department of Safety and Professional Services, Division of Safety and Professional Services (Division). The motion for default was granted on November 21, 2014 and a Notice of Default and Order was issued on that date. The Division subsequently filed and served a recommended proposed decision and order.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of Fact 1-8 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Janet Patek (D.O.B. July 9, 1961) is certified in the State of Wisconsin to practice social work, having certificate number 1300-120, first granted on September 27, 1993, and current through February 28, 2015.

2. The most recent address for Respondent on file with the Wisconsin Department of Safety and Professional Services (Department) is 223 E. Peckham Street, Neenah, Wisconsin 54956.

3. The Department conducted an audit of social workers' compliance with the continuing education requirements for renewal of social work credentials. Respondent was chosen as a subject of the audit.

4. On September 24, 2013, and December 12, 2013, the Department sent letters to Respondent with instructions on responding to the audit.

5. Respondent did not respond to the letters, and did not supply any evidence that she had complied with the continuing education requirements for renewal of her social work certificate.

6. On August 20, 2014, the Department sent an e-mail to Respondent at the e-mail address she had previously provided to the Department, asking for her response. As of September 4, 2014, the Department had received no reply from Respondent.

7. On September 4, 2014, the Department sent a letter to Respondent at her address of record, asking for a response to the continuing education audit. On September 8, 2014, that letter was returned by the U.S. Postal Service with a new address notice.

8. On September 9, 2014, the Department sent a letter to Respondent at 1050 Symphony Boulevard, Neenah, Wisconsin 54956, the address provided by the Postal Service. The letter asked for a response to the audit by September 23, 2014. That letter was not returned, and the Department has not received a response from Respondent.

Facts Related to Default

9. The Complaint and Notice of Hearing in this matter were served on Respondent on October 20, 2014, 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."

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

11. Following expiration of the 20-day time period to file an Answer, the undersigned administrative law judge (ALJ) scheduled a telephone prehearing conference for November 21, 2014. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which she could be reached for the conference no later than November 17, 2014. The Notice advised Respondent: "A respondent's

failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent.”

12. Respondent failed to provide a telephone number and could not be reached for the prehearing conference held on November 21, 2014.

13. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c) based on Respondent’s failure to file an Answer and failure to appear. The ALJ granted the motion for default.

14. On November 21, 2014, the ALJ issued a Notice of Default and Order which required the Division to serve no later than December 11, 2014 a recommended proposed decision and order.

15. The Division timely filed its recommended proposed decision and order. Respondent did not file a response to either the Notice of Default and Order or to the Division’s submission.

DISCUSSION AND CONCLUSIONS OF LAW

Default

Wisconsin Admin. Code § SPS 2.14 provides: “If the respondent fails to answer as required by s. SPS 2.09 or 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.” An Answer to a Complaint must be filed within 20 days of service of the Complaint. *See* Wis. Admin. Code § SPS 2.09(4). Service of the Complaint may be made by mailing a copy of the Complaint to the respondent at the respondent’s last known address. *See* Wis. Stat. § 440.11(2); Wis. Admin. Code § SPS 2.08(1). “Service by mail is complete upon mailing.” Wis. Admin. Code § SPS 2.08(1). Further, Wis. Admin. Code § HA 1.07(3) states, in relevant part:

(3) FAILURE TO APPEAR.

(b) If a Respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate. . .

(c) For a telephone or video hearing or prehearing the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: (1) The failure to provide a telephone number to the division after it had been requested; (2) the failure to answer the telephone or video conference line . . . (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

On October 20, 2014, the Division duly served Respondent with the Complaint by mailing a copy of the Notice of Hearing and Complaint by both regular and certified mail to Respondent’s most recent address on file with the Department. Pursuant to Wis. Admin. Code §§ SPS 2.08(1) and 2.09(4), Respondent was required to file an Answer within 20 days, but failed to do so. Respondent also failed to appear at the telephone prehearing conference held on

November 21, 2014 and failed to provide a telephone number at which she could be reached for the conference.

As stated in the November 21, 2014 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the prehearing conference held on November 21, 2014. Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violations of Wisconsin Statutes and Administrative Code

The Division alleges that Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code § MPSW 20.02(2) by failing to comply with requests to demonstrate compliance with the continuing education requirements of her certification, and that she also engaged in unprofessional conduct pursuant to Wis. Admin. Code § MPSW 20.02(2) by failing to notify the Department of her new address as required by Wis. Stat. § 440.11(1). As a result, the Division alleges, Respondent is subject to discipline pursuant to Wis. Stat. § 457.26(2). These violations are addressed in turn.

Respondent engaged in unprofessional conduct by failing to respond to requests regarding compliance with continuing education requirements.

Wisconsin Stat. § 457.26(2) provides the circumstances under which a social worker may be disciplined by the Social Worker Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (Section). Included in these circumstances is the commission of “unprofessional conduct.” Wis. Stat. § 457.26(2)(f). The phrase “unprofessional conduct” is addressed in Wis. Admin. Code § MPSW 20.02. This rule provides no definition of the phrase, but instead only provides a list of 23 examples of unprofessional conduct. None of the delineated examples address a credential holder’s failure to respond to requests for information from the Department, nor do they address continuing education requirements. However, as indicated in the prefatory language to § MPSW 20.02, the list is not meant to be all-encompassing or exclusive. In the instant case, the Division requests this tribunal to conclude that Respondent’s failure to comply with requests for information regarding continuing education requirements constituted unprofessional conduct, despite the fact that the conduct does not fall under any specific definition of unprofessional conduct and is not covered by any of the delineated examples of unprofessional conduct provided in the rule.

Under the circumstances here, where Respondent has defaulted, no argument has been made that the conduct does *not* constitute unprofessional conduct, and a reasonable argument may be made that it does, I conclude that it was unprofessional conduct for Respondent to fail to respond to the Department’s repeated requests for information regarding her compliance with continuing education requirements.

As evidenced by applicable statutes and administrative rules, compliance with continuing education requirements is critical to the profession of social work. The legislature delegated to the Section the authority to promulgate rules requiring social workers to complete continuing education requirements. Wis. Stat. § 457.22(1)(a). The Section promulgated such a rule, Wis. Admin. Code § MPSW 8.02, which requires social workers to complete at least 30 education

hours in each two-year credentialing period, four of which must be in social work ethics and boundaries, and to verify compliance as part of their applications for credential renewal. This provision further requires a social worker who fails to meet the continuing education requirements by the renewal deadline to cease and desist from using a social worker title, and, if licensed as a clinical social worker, to cease practice as a clinical social worker. Wis. Admin. Code § MPSW 8.02(4). Moreover, every social worker is required to retain original documents showing attendance at programs for at least four years from the time that credit is claimed, and, at the request of the Section, must “deliver their original documents to the [S]ection.” Wis. Admin. Code § MPSW 8.02(3).

Continuing education requirements ensure that social workers remain current in the laws and standards, including ethical requirements, governing their profession. Those entities charged with the responsibility of ensuring that those who practice social work do so in a safe and professional manner must be able to verify compliance with continuing education requirements. In the instant case, the Department attempted to verify that Respondent was in compliance with the continuing education requirements for renewal. Respondent refused to provide any information, despite repeated requests. Respondent has likewise refused to participate in these disciplinary proceedings and has not provided any explanation for disregarding the Department’s requests for information. Based on the record and arguments presented in this case, I conclude that the Department has met its burden of demonstrating that Respondent’s conduct constitutes unprofessional conduct.

Respondent’s failure to keep the Department updated on her current address did not constitute unprofessional conduct under Wis. Stat. § 457.26(2)(f) and Wis. Admin. Code § MPSW 20.02.

Wisconsin Stat. § 440.11(1) requires a credential holder to notify the Department within 30 days when the credential holder moves from the last address provided to the Department. The penalty for failure to so notify the Department is specifically set forth in Wis. Stat. § 440.11(3), namely, a forfeiture of \$50.

The statute which allows for discipline against social workers, Wis. Stat. § 457.26, does not specifically allow discipline for failure to notify the Department of a change of address. Although this provision allows disciplinary action against a social worker who engages in unprofessional conduct, Wis. Admin. Code § MPSW 20.02 does not specifically include failure to notify of a change of address in its list of acts constituting unprofessional conduct. Instead, the Division relies on the example of unprofessional conduct contained in § MPSW 20.02(2), namely, “[v]iolating a law of any jurisdiction, the circumstances of which substantially relate to the practice under the credential.” According to the Division, the “law” violated was Wis. Stat. § 440.11(1), which, as set forth above, requires notification upon a change of address within 30 days.

Even in the context of default, the Division’s argument fails as a matter of law because failure to provide a current address within 30 days does not “substantially relate” to the practice of social work. Accordingly, the Department’s argument must be rejected.

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent's certificate to practice social work be indefinitely suspended. The Division further recommends that Respondent be permitted to petition the Section for reinstatement of the certificate and that the decision whether to grant reinstatement should be a decision solely within the Section's discretion. If the Section grants a petition to reinstate the certificate, the Division argues that the Section should be permitted to place any limitations on the certificate that the Section deems appropriate to ensure that Respondent has completed or will complete remedial social work education satisfactory to the Section.

Based on the facts of record here and the disciplinary factors set forth in *Aldrich*, the Division's recommendation is warranted. Under applicable law, the conditions of Respondent's social work certificate include maintaining current education in social work practice and ethics. Through her failure to respond to the Department's request for information and her failure to participate in these proceedings, Respondent has made it impossible to determine whether she is in compliance with the requirements governing her profession. Thus, there is no basis to conclude that Respondent is fit to practice social work in a safe and reliable manner. Indefinite suspension unless and until Respondent demonstrates compliance satisfactory to the Section best serves to rehabilitate Respondent, protect the public and deter other licensees from engaging in such conduct.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. The Division requests that Respondent be ordered to pay the full costs of this investigation and of these proceedings. The factors to be considered in assessing costs are: (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 respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department 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. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz, D.C.*, Order No. LS0802183CHI (Aug. 14, 2008).

Based on the factors delineated in *Buenzli-Fritz* and the facts of this case, including Respondent's complete failure to participate in the Department's investigation or these administrative proceedings, Respondent is assessed the full amount of recoverable costs.¹

¹ The Division's cover letter suggests that the Division is requesting that full costs be imposed on Respondent. However, in the Order section of its recommended proposed decision and order, the Division asserts that \$500 in costs be imposed. There is no support in the record for imposition of costs in the amount of \$500, nor is there any indication whether \$500 represents the full costs of these proceedings. Therefore, full costs are imposed, in an amount to be determined at the conclusion of these proceedings, pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS HEREBY ORDERED:

1. Respondent Janet E. Patek's certificate to practice social work in the State of Wisconsin is SUSPENDED for an indefinite period.

2. Respondent may petition the Section for reinstatement of her certificate to practice social work. Whether to grant reinstatement of the certificate shall be a decision solely in the Section's discretion. If the Section grants a petition to reinstate the certificate, the Section may place any limitations on the certificate the Section deems appropriate to ensure that Respondent has completed or will complete all of her required social work continuing education credits.

3. Respondent may not practice as a social worker at any time during the period of suspension.

4. 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 7190
Madison, WI 53707-7190**

5. 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 is hereby closed as to Respondent Janet E. Patek.

Dated at Madison, Wisconsin on this 14th day of January December, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Tel. (608) 266-7709
Fax (608) 264-9885

By: _____

Jennifer E. Nashold
Administrative Law Judge