

## 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 Disciplinary Proceedings Against  
Shannon Hayes, Respondent

FINAL DECISION AND ORDER

Order No. 0004068

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**Division of Legal Services and Compliance Case No. 14 RSG 022**

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 12<sup>th</sup> day of June, 2015.

A handwritten signature in black ink, appearing to read "Michael J. Berndt", written over a horizontal line.

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 Disciplinary Proceedings Against  
Shannon Hayes, Respondent

DHA Case No. SPS-15-0025  
DLSC Case No. 14 RSG 022

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**PROPOSED DECISION AND ORDER**

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

Shannon Hayes  
9217 North 75<sup>th</sup> Street, Apt. 606  
Milwaukee, WI 53223

Wisconsin Department of Safety and Professional Services  
P.O. Box 8366  
Madison, WI 53708-8366

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

Attorney Sarah E. Norberg  
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 a formal Notice of Hearing and Complaint against Respondent Shannon Hayes (Respondent). The Complaint alleged that Respondent's permit was subject to disciplinary action pursuant to Wis. Stat. § 440.26(6)(a)1., 2. and 4. and Wis. Admin. Code § SPS 35.01 because Respondent: (1) engaged in conduct reflecting adversely on her professional qualification pursuant to Wis. Admin. Code § SPS 35.01(2) by violating laws the circumstances of which substantially relate to the practice of a private security person; (2) violated Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS 35.01(2) by failing to notify the Department within 48 hours after entry of the judgment of conviction; (3) violated Wis. Stat. § 440.11(1) by failing to notify the

Department of her new address within 30 days of the change; and (4) engaged in conduct reflecting adversely on professional qualifications pursuant to Wis. Admin. Code § SPS 35.01(23) by failing to cooperate in a timely manner with the Department's investigation. The Division served Respondent on February 20, 2015 by sending a copy of the Notice of Hearing and Complaint to her address on file with the Department. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09(4) and failed to appear at the prehearing conference held before the Division of Hearings and Appeals on March 24, 2015.

At the prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c), respectively. In light of Respondent's failure to file an Answer to the Complaint and failure to appear for the conference, the undersigned administrative law judge (ALJ) found Respondent to be in default. On March 24, 2015, the ALJ issued a Notice of Default and Order, requiring that the Division file a recommended proposed decision by April 23, 2015. The Division timely filed its recommended proposed decision. Respondent did not file a response to the Notice of Default.

### 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, and, with respect to finding of Fact No. 5, from a certified copy of the Milwaukee County Circuit Court Traffic Court Record, Case No. 2013F0000407, attached to the Division's April 28, 2015 submission.

1. Respondent Shannon Hayes is permitted by the State of Wisconsin as a private security person, permit number 44765-108. This permit was first granted to Respondent on February 9, 2012 and expires on August 31, 2016.

2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is 9217 North 75<sup>th</sup> Street, Apt. 606, Milwaukee, Wisconsin 53223.

3. On April 15, 2013, Respondent was convicted of Operating a Motor Vehicle without Insurance and Operate after Rev/Susp of Registration in Milwaukee County Circuit Court (case numbers 2013TR010401 and 2013TR010400) and ordered to pay forfeitures.

4. On April 22, 2013, the Operating a Motor Vehicle without Insurance and Operate after Rev/Susp of Registration charges were reopened, and on July 25, 2013, Respondent was again convicted of both violations and ordered to pay forfeitures.

5. On July 25, 2013, Respondent was convicted of Littering in Milwaukee County Circuit Court (case number 2013FO000407) and ordered to pay a forfeiture. The littering charge had been reduced from a charge of possession of marijuana.

6. Respondent did not report these convictions to the Department in writing within 48 hours of the entry of the judgments of conviction.

7. On November 25, 2014, the Department sent a request for information to Respondent at her address of record at the time (5669 North 78<sup>th</sup> Street, Milwaukee, Wisconsin 53218). This letter was returned to the Department on or about November 28, 2014 by the United States Postal Service and indicated a different address for Respondent (9217 North 75<sup>th</sup> Street, Apt. 606, Milwaukee, Wisconsin 53223).

8. On December 18, 2014, the Department sent another request for information to the Respondent at the address provided by the United States Postal Service. This letter has not been returned; however, no response has been received from Respondent.

#### Facts Related to Default

9. The Complaint and Notice of Hearing in this matter were served on Respondent on February 20, 2015 by both certified and regular mail consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing advised 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."

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

11. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for March 24, 2015. 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 no later than March 18, 2015. The Notice instructed Respondent: "The 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.

13. At the prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

14. On March 24, 2015, the ALJ issued a Notice of Default and Order, requiring the Division to serve no later than April 23, 2015 a recommended proposed decision and order, which the Division timely filed.

15. Respondent did not file a response to the Notice of Default or to the Division's recommended proposed decision and order.

## DISCUSSION AND CONCLUSIONS OF LAW

As stated in the March 24, 2015 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 March 24, 2015. As a result, an order may be entered against her on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violation of Wis. Stat. §§ 440.26(6)(a), 440.26(4m)(b), 440.11, and Wis. Admin. Code §§ SPS 35.01(2) and 35.01(23)

The Division alleges that Respondent is subject to discipline pursuant to Wis. Stat. § 440.26(6)(a)1., 2., and 4., which states:

(a) Subject to the rules adopted under s. 440.03(1), the department may reprimand the holder of a license or permit issued under this section or revoke, suspend or limit the license or permit of any person who has done any of the following:

1. Been convicted of a misdemeanor or found to have violated any state or local law that is punishable by a forfeiture, subject to ss. 111.321, 111.322 and 111.335.<sup>1</sup>

2. Engaged in conduct reflecting adversely on his or her professional qualification.

...

4. Violated this section or any rule promulgated or order issued under this section.

Wisconsin Admin. Code § SPS 35.01 states, in relevant part:

The department may deny an application for renewal, limit, suspend or revoke a credential, or reprimand a credential holder upon proof that the credential holder or any owner of an agency has engaged in conduct reflecting adversely on professional qualification. Conduct reflecting adversely on professional qualification includes, but is not limited to, any of the following:

...

(2) Violating, or aiding or abetting the violation of, any law the circumstances of which substantially relate to the practice of a private detective or private security person. A credential holder who has been convicted of a felony, misdemeanor or ordinance violation, as defined in s. 440.26(4m), Stats., shall send to the department within 48 hours after the judgement of conviction or the judgement finding that the person committed the violation, a copy of the complaint or other information

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<sup>1</sup> Pursuant to these provisions in Chapter 111 of the Wisconsin Statutes, a prior conviction may not be considered in employment or licensing decisions unless the circumstances of the offense substantially relate to the circumstances of the particular job or licensed activity.

which describes the nature of the crime or conviction and the judgement of conviction in order that the department may determine whether disciplinary action must or should be taken against credential holder.

Conduct reflecting adversely on professional qualification includes violating any law the circumstances of which substantially relate to the practice of a private security person. Wis. Admin. Code § SPS 35.01(2). The undisputed facts establish that on July 25, 2013, Respondent was convicted of Operating a Motor Vehicle without Insurance, Operate after Rev/Susp of Registration, both traffic offenses, and Littering, a civil forfeiture offense, in Milwaukee County Circuit Court Case Numbers 2013TR010401, 2013TR010400, and 2013FO000407. For the reasons set forth below, I conclude that the circumstances of these offenses are substantially related to the circumstances of being a private security person.

The Wisconsin Supreme Court discussed the test for determining whether a conviction is substantially related to the circumstances of a profession in *County of Milwaukee v. Labor & Industry Review Comm'n*, 139 Wis. 2d 805, 407 N.W.2d 908 (1987). “[T]he legislature sought to balance at least two interests. On the one hand, society has an interest in rehabilitating one who has been convicted of crime and protecting him or her from being discriminated against in the area of employment. . . . On the other hand, society has an interest in protecting its citizens.” *Id.* at 821. Assessing whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. *Id.* at 824. “[I]t is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of that person.” *Id.* at 824. The requirements of the test must have a “semblance of practicality” and should allow the Department to determine whether the conviction is substantially related to the license in a “confident, timely, and informed way.” *Id.*

The undisputed facts establish that in 2013, Respondent was convicted of Operating a Motor Vehicle without Insurance, Operate after Rev/Susp of Registration, and Littering.<sup>2</sup> The circumstances surrounding the littering conviction include the fact that the littering charge was reduced from the charge of possession of marijuana. The circumstances of Respondent’s three convictions reveal a lack of respect for the law and authority, and a disregard for the public welfare, particularly with respect to the driving while uninsured conviction. Driving without insurance could result in members of the public being left without recourse to cover expenses as a result of traffic accidents which were not their fault. To fulfill the duties and responsibilities as a licensed private security person, Respondent must be able to uphold the law and respect the limits of the law in enforcing the law on others. Private security persons are stationed in malls, warehouses, and at events of all sizes and exercise a high degree of authority. They assist with keeping the peace, protecting people and their property, preventing the occurrence of criminal actions. These circumstances, if not responsibly handled, can endanger the public. Respect for the law and the public welfare is essential to the proper exercise of this authority and to the position of private security person.

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<sup>2</sup> The Division alleges that other facts related to the littering conviction are “undisputed,” namely, circumstances allegedly related to the initial stop by police and search of Respondent’s vehicle. However, these allegations are not contained in the Complaint or in any other evidence provided by the Division and are therefore not considered here.

Based on the facts of this case and relevant case law, and the fact that Respondent has made no argument to the contrary, I conclude that the circumstances of Respondent's violations substantially relate to the circumstances of the practice of a private security person. Therefore, Respondent engaged in conduct reflecting adversely on his professional qualification pursuant to Wis. Stat. § 440.26(6)(a)2. and Wis. Admin. Code § SPS 35.01(2).

The undisputed facts of this case also establish that Respondent failed to notify the Department within 48 hours of the judgment of conviction. Wisconsin Stat. § 440.26(4m)(b) requires the holder of a license or permit who is found to have committed a violation to "notify the department in writing of the date, place and nature of the . . . finding within 48 hours after the entry of . . . the judgment finding that the person committed the violation." Wisconsin Admin. Code § SPS 35.01(2) also requires credential holders to report a conviction within 48 hours of entry of the judgment of conviction. Respondent's failure to notify the Department within 48 hours of the judgment of conviction constitutes a violation of Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS 35.01(2).

The undisputed facts of this case also show that the Respondent failed to notify the Department of her new address within 30 days of the change. Wisconsin Stat. § 440.11(1) states that "a recipient of a credential who moves from the last address provided to the department shall notify the department of the new address within 30 days of the change in writing or in accordance with other notification procedures approved by the department." On August 6, 2014, Respondent's address on record with the Department was 5669 North 78<sup>th</sup> Street, Milwaukee, Wisconsin 53218. Mail sent to this address by the Department, on November 25, 2014, was returned by the United States Postal Service with a different address. Respondent never notified the Department of this new address. Respondent's failure to notify the Department of her new address within 30 days of the address change is a violation of Wis. Stat. § 440.11(1).

Conduct reflecting adversely on professional qualifications also includes failing to cooperate in a timely manner with the Department's investigation. Wis. Admin. Code § SPS 35.01(23). There is a rebuttable presumption that a credential holder has not cooperated in a timely manner if he or she fails to respond to a request from the Department within 30 days. *Id.* The undisputed facts of this case establish that on November 25, 2014, the Department sent a request for information to Respondent at her address of record (5669 North 78<sup>th</sup> Street, Milwaukee, Wisconsin 53218). The letter was returned, on November 28, 2014, to the Department by the United States Postal Service and indicated a different address for the Respondent (9217 North 75<sup>th</sup> Street, Milwaukee, Wisconsin 53223). The Department sent an additional request for information to the address indicated by the United States Postal Service on December 18, 2014. This letter was not returned and the Department has received no response.

Based on the above facts, I conclude that Respondent did not cooperate with a Department investigation in a timely manner and therefore engaged in conduct reflecting adversely on professional qualifications pursuant to Wis. Stat. § 440.26(6)(a)2. and Wis. Admin. Code § SPS 35.01(23).

As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 440.26(6)(a)1., 2. and 4. and Wis. Admin. Code § SPS 35.01.



### Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the credential holder; (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 private security person permit be revoked. The recommended discipline is consistent with the purposes articulated in *Aldrich* and with case law.

"Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a license is granted to an individual, Wisconsin is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the state cannot assure the public of the licensee's competence to practice the profession, then revocation is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984).

As stated above, private security persons exercise a high degree of authority and are charged with upholding the law and protecting the public. In contrast to these characteristics, Respondent exhibited a continuous lack of respect for both the law and the public by failing to fulfill the responsibilities of a driver's license and by demonstrating a lack of regard towards other people's health and well-being by driving while uninsured.

In addition to ignoring the requirements of the law, Respondent has also ignored the Department's legitimate authority. Respondent did not disclose these convictions within the required time frame. Respondent was nonresponsive throughout the Department's investigation and in this proceeding. Every item of correspondence sent to Respondent by both the Department and the ALJ has gone unanswered. Furthermore, Respondent has not upheld even the minimal credentialing requirement of failing to keep her address current with the Department. When an individual has demonstrated an inability to handle the amount of responsibility commensurate with holding a professional license, she should not continue to be entrusted with that license. Therefore, revocation is an appropriate response to Respondent's disrespect for the law and public welfare, as well as her disregard of the licensing authority governing her profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is unlikely in this matter. Respondent has avoided every opportunity to comply with the reporting requirements of this permit, which exist to ensure the continuing competence of the licensee. The Department cannot determine whether any other method of rehabilitation is appropriate nor can it determine Respondent's competency to practice her profession when she refuses to respond to the Department's inquiries. If Respondent will not submit to the authority of the licensing agency, it is contrary to public safety for Respondent to continue to hold a permit. Revocation of Respondent's permit would set a strong precedent going forward that the requirements of licensure are to be taken seriously and that cooperation with an investigation by the Department is required in all instances.

In light of the facts of this case, the discipline recommended by the Division is warranted here.

#### Costs

The Department 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 its investigation and of these proceedings. The factors to be considered in assessing full 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 parties; (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*, LS0802183CHI (Aug. 14, 2008).

Based on the factors delineated in the *Buenzli-Fritz* decision and the facts of this case, Respondent should be assessed the full amount of recoverable costs in this case. The Respondent, by nature of being in default, has not presented any mitigating evidence that would suggest the full imposition of costs is inappropriate. Respondent has been convicted of three violations that indicate lack of respect for the law and public welfare, has not informed the Department of these convictions or changes in address, has not cooperated with the investigation and did not participate in these proceedings. The level of discipline sought by the Division is serious, and, given the program revenue nature of the Department, fairness dictates imposing costs of these disciplinary proceedings on Respondent rather than on fellow members of her profession who have not engaged in such conduct.

#### ORDER

Accordingly, IT IS ORDERED that Respondent's private security person permit (#44765-108) is hereby REVOKED pursuant to Wis. Stat. § 440.26(6) and Wis. Admin. Code § SPS 35.01, effective on the date the final decision is signed by the Department.

IT IS FURTHER ORDERED that 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

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Shannon Hayes.

Dated at Madison, Wisconsin on May 19, 2015.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_

  
Jennifer E. Nashold  
Administrative Law Judge