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

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In the Matter of Disciplinary Proceedings Against  
Sara E. Malay, Respondent

FINAL DECISION AND ORDER

Order No. 0004094

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**Division of Legal Services and Compliance Case No. 14 SOC 144**

The State of Wisconsin, 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, 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 17<sup>th</sup> day of June, 2015.

Member

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



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

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In the Matter of the Disciplinary Proceedings  
Against Sara E. Malay

DHA Case No. SPS-15-0009  
DLSC Case No. 14 SOC 144

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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:

Sara E. Malay  
P.O. Box 224  
Denmark, WI 54208

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

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

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

PROCEDURAL HISTORY

The above-captioned matter is before this tribunal on default based on Respondent Sara E. Malay's failure to file an Answer to the Complaint and Amended Complaint and failure to appear at two telephone conferences held before the undersigned administrative law judge (ALJ) on February 16, 2015 and March 19, 2015.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-7 are taken from the Division's Amended Complaint filed in this matter.

1. Respondent Sara E. Malay (DOB December 24, 1968) is certified in the State of Wisconsin to practice social work, having certificate number 4111-120, first granted to on September 23, 1994, and current through February 28, 2015.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is Post Office Box 224, Denmark, Wisconsin 54208.

3. Respondent certified on her 2013 application for license renewal that she completed 30 hours of continuing education in the 2011-2013 biennium.

4. In 2013, the Department commenced an audit of licensed social workers' compliance with the continuing education requirements for the 2011-2013 biennium.

5. Respondent was selected as a subject of the audit.

6. Respondent has been contacted multiple times by the Department pursuant to the audit, and was asked, on behalf of the Social Worker Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board, to provide original documents showing completion of Respondent's continuing education requirements for the 2011-2013 biennium.

7. Respondent has not presented any evidence of any completed continuing education, and thus has failed to demonstrate compliance with the continuing education requirements for the 2011-2013 biennium.

#### Facts Related to Default

8. The Complaint and Notice of Hearing in this matter were served on Respondent on January 20, 2015, by both certified and regular mail. 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 Board 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."

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

10. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for Monday, February 16, 2015. Notice of the prehearing conference was sent to both parties on February 5, 2015, with instructions that Respondent provide the ALJ with a telephone number at which she could be reached for the conference no later than February 11, 2015. The Notice further informed Respondent: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."

11. Respondent failed to provide a telephone number and could not be reached for 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), which the ALJ granted.

12. On February 16, 2015, the ALJ issued a Notice of Default and Order which concluded that Respondent was in default and required the Division to serve no later than March 2, 2015, a recommended proposed decision and order, which the Division timely filed.

13. Pursuant to a Notice issued on March 10, 2015, an additional telephone conference was held on March 19, 2015, at which Respondent again failed to appear. The Division moved to amend its Complaint and clarified that it was requesting that full costs of these proceedings be imposed on Respondent. The motion was granted, and on March 25, 2015, the Division filed and served its Amended Complaint. Respondent again failed to file an Answer.

14. Respondent has not participated in any way in these proceedings.

## DISCUSSION AND CONCLUSIONS OF LAW

### Default

As stated in the February 16, 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 February 16, 2015. *See* Wis. Admin. Code §§ SPS § 2.09(4) and 2.14; Wis. Admin. Code § HA 1.07(3). She is likewise in default for failing to appear at the March 19, 2015 telephone conference and failing to file an Answer to the Amended Complaint. *Id.* Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

### Violations of Wisconsin Statute and Administrative Code

Following an investigation and disciplinary hearing, the Social Worker Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (Section) may reprimand a credential holder or deny, limit, suspend, or revoke a credential if it determines that a credential holder engaged in unprofessional conduct, or violated Chapter 457 of the Wisconsin Statutes or any rule promulgated under that chapter. Wis. Stat. § 457.26(2)(f) and (h), respectively.

The Division alleges that Respondent engaged in unprofessional conduct under Wis. Stat. § 457.26(f) and Wis. Admin. Code § MPSW 20.02(2). Wisconsin Admin. Code § MPSW 20.02(2) defines “unprofessional conduct” to include “[v]iolating a law of any jurisdiction, the circumstances of which substantially relate to the practice under the credential.”

The Division states that Respondent violated Wis. Admin. Code § MPSW 8.02(1),<sup>1</sup> which provides that, unless granted a postponement or waiver, 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. The Division argues that because Respondent did not respond to the Department’s request for information regarding her continuing education for 2011-2013, it must be inferred that she did not complete them. The factual allegations contained in the Amended

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<sup>1</sup> References to Wis. Admin. Code § MPSW 8.02 are to the provision as it existed during the relevant time period, 2013, prior to changes made to the code, effective March 1, 2015.

Complaint, accepted as true due to Respondent's default, do not establish this violation. A failure to respond does not necessarily equate to a failure to complete continuing education requirements. While Respondent's failure to provide the requested information certainly raises suspicion, it is not sufficient to establish that she did not complete the required 30 hours, particularly given that Respondent certified on her 2013 application for license renewal that she completed 30 hours of continuing education in the 2011-2013 biennium. The information contained in the Amended Complaint is insufficient to establish that Respondent violated Wis. Admin. Code § MPSW 8.02(1) by failing to complete 30 hours of continuing education for the 2011-2013 biennium.

The Division also alleges that Respondent violated Wis. Admin. Code § MPSW 8.02(3), which states: "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."

As part of its 2013 audit, the Department contacted Respondent multiple times, requesting, on behalf of the Section, that she provide original documents showing completion of Respondent's continuing education requirements for the 2011-2013 biennium. Respondent failed to respond to these requests for information and is therefore in violation of Wis. Admin. Code § MPSW 8.02(3). As a result of this violation, Respondent is subject to discipline pursuant to Wis. Stat. § 457.26(2)(h) for violating a rule promulgated under Chapter 457 of the Wisconsin Statutes, and is also subject to discipline for engaging in unprofessional conduct pursuant to Wis. Stat. § 457.26(f) and Wis. Admin. Code § MPSW 20.02(2).

#### 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 suspended for an indefinite period. Because Respondent's certificate was only current through February 28, 2015, the Division is presumably also requesting that Respondent's right to renew also be indefinitely suspended. The Division asks that Respondent be permitted to petition the Section for reinstatement of her certificate (and the right to renew), and that the Section, in its discretion, be permitted to grant or deny such a petition and, if granted, impose any limitations it deems appropriate to ensure Respondent will complete remedial social work education satisfactory to the Section.

I conclude this discipline is warranted. The purpose of the credential is to protect the public. *See Noesen v. State Dep't of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶ 15, 311 Wis. 2d 237, 751 N.W.2d 385. The conditions of Respondent's certificate set forth in Chapter 457 of the Wisconsin Statutes and Chapter MPSW 8 of the Administrative Code include maintenance of current education in social work practice and ethics. Because Respondent has refused to respond to the Section's request for information regarding her continuing education obligations and has failed to participate in any way with these proceedings, the Section has no assurance that Respondent is in compliance with the education

or ethical requirements governing her profession. Respondent's conduct leaves the ALJ and the Section without any basis to conclude that she continues to be fit to practice with safety to the public and deprives the ALJ and the Section of information that might demonstrate that some other disciplinary action is appropriate. Consequently, indefinite suspension of Respondent's credential best serves to protect the public, rehabilitate Respondent, and deter others from failing to cooperate with the Sections' request for important information.

### 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.*, Case No. LS0802183CHI (Aug. 14, 2008).

Under these criteria and the facts of this case, it is appropriate to impose the costs of this proceeding on Respondent. These proceedings were initiated due to Respondent's failure to respond to the audit regarding her compliance with conditions governing her credential. Respondent's refusal to respond to the Section and her refusal to cooperate in these proceeding demonstrate a serious disregard for Section's authority and the standards of her profession. Finally, it would be unfair to impose the costs of these proceedings on other members of Respondent's profession who, unlike Respondent, have not engaged in misconduct.

### ORDER

Accordingly, IT IS HEREBY ORDERED:

1. Respondent's certificate to practice social work (number 4111-120) in the State of Wisconsin, and her right to renew this certificate, are SUSPENDED for an indefinite period.
2. Pursuant to Wis. Stat. § 457.04(1), Respondent may not practice as a social worker at any time during the period of suspension.
3. Respondent may petition the Section for re-instatement of the certificate and her right to renew the certificate. Whether to grant reinstatement shall be a decision solely in the Section's discretion. If the Section grants a petition to reinstate the certificate, the Section may place limitations on the certificate in the manner the Section deems appropriate to ensure that Respondent has or will complete remedial social work education satisfactory to the Section.
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:

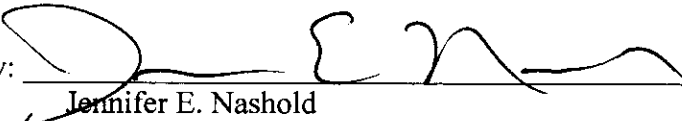
Department Monitor  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

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 Sara E. Malay.

Dated at Madison, Wisconsin on May 13, 2015.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By:   
Jennifer E. Nashold  
Administrative Law Judge