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

In the Matter of the Disciplinary Proceedings
Against Ellen Pederson-Lewis, L.M.F.T.,
Respondent

FINAL DECISION AND ORDER
0004113
Order No. _____

Division of Legal Services and Compliance Case No. 13 MFT 003

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 26th day of June, 2015.

A handwritten signature in cursive script, reading "Alice Hanson Drew".

Member

Marriage and Family Therapy Section
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 Disciplinary Proceedings Against
Ellen Pederson-Lewis, L.M.F.T., Respondent

DHA Case No. SPS-14-0086
DLSC Case Nos. 13 MFT 003

PROPOSED DECISION AND ORDER

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

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

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Department of Safety and Professional Services
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PROCEDURAL HISTORY

Proceedings were initiated in the above-captioned matter on November 19, 2014, when the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), served two Complaints against Respondent Ellen Pederson-Lewis: one pertaining to her marriage and family therapy license, and the other pertaining to her license to practice clinical social work. The Complaints arise from the same factual allegations and allege the same violation, namely, that Respondent engaged in unprofessional conduct by failing to cooperate with a Division investigation regarding Respondent's treatment of Patient A,¹ in violation of Wis. Stat. § 457.26(f) and Wis. Admin. Code § MPSW 20.02.

¹ Like the Complaints, this decision refers to the patient as Patient A in order to protect confidentiality.

On December 17, 2014, Respondent, through counsel, filed Answers to the Complaints. A telephone prehearing conference was held on December 19, 2014, at which Respondent's counsel indicated he wished to have additional time to review these matters as he had only been retained two days prior to the conference. An additional prehearing conference was held on January 28, 2015, at which the matters were set for hearing. A hearing was held on March 23, 2015, and a hearing transcript was received by the undersigned administrative law judge on April 2, 2015.

FINDINGS OF FACT

1. Respondent Ellen Pederson-Lewis, L.M.F.T. and L.C.S.W. (DOB August 18, 1962), is licensed in the State of Wisconsin to practice marriage and family therapy, having license number 401-124, first granted on April 14, 1995, and current through February 28, 2015. Respondent is also licensed in the State of Wisconsin to practice clinical social work, having license number 1670-123, first granted on November 4, 1993 and current through February 28, 2015. (Complaints, ¶ 1; Answers, ¶ 1)

The Department's Investigation and Requests for Information

2. On July 24, 2013, the Department received a referral from the Wisconsin Department of Health Services (DHS) alleging that Respondent failed to respond appropriately to one of her patients, Patient A, when Patient A sent her a text message indicating a present intention to commit suicide. DHS had received a complaint from a family member of Patient A, who suggested that because of Respondent's failure, Patient A was able to succeed in committing suicide. Respondent had treated Patient A from March to June of 2013. (Resp. Ex. 1, p. 134; Div. Ex. A, p. 8; Hrg. Tr., pp. 9-10)

3. On July 26, 2013, the Division sent its first letter to Respondent requesting information regarding Respondent's treatment of Patient A. The information was requested on behalf of the Social Work Section and the Marriage and Family Section of the Marriage & Family Therapy, Professional Counseling & Social Work Joint Examining Board (Board). The letter stated in relevant part as follows:

The complaint states that your client, [Patient A], reached out to you in a text message, making statements that were suicidal in nature. You delayed responding to her, and failed to contact or notify anyone to check up on her welfare for 16 hours. In addition, you repeatedly cancelled appointments or did not respond to [Patient A's] pleas for assistance.

Please review your treatment records of [Patient A] and provide a detailed written description of the treatment you provided, responding to the allegation(s).

The letter requested that Respondent submit her written response no later than August 8, 2013. Respondent failed to respond by August 8, 2013. (Resp. Ex. 1, p.144; Hrg. Tr., pp. 10-11)

4. On September 17, 2013, Division Investigator Emily Muche sent a second request to Respondent, on behalf of the appropriate sections of the Board, reminding Respondent of the

July 26, 2013 request for information and extending the deadline to respond to September 24, 2013. (Resp. Ex. 1, p. 133; Hrg. Tr., p. 11)

5. On September 30, 2013, Muche, after identifying herself as the Board sections' representative, attempted to contact Respondent by telephone, and left a voice message on Respondent's "confidential" voice mail. (Div. Ex. A, p. 4; Resp. Ex. 1, p. 132)

6. On October 1, 2013, Respondent called Muche and admitted that she received the Division's July 26, 2013 letter but had not yet responded because she was going through a family crisis and could now no longer find the letter. Respondent indicated she had signed for the second, September 17, 2013, letter and would be picking it up at the post office the following day, October 2, 2013. Muche again instructed Respondent to submit her written response. (Resp. Ex. 1, p. 132; Hrg. Tr., pp. 11-12)

7. On October 8, 2013, Respondent called Muche and stated that she had picked up the second letter. She stated that her husband had been undergoing treatment for an illness, which is why she had not yet responded to the initial, July 26, 2013, letter. She again stated that she would provide a response. (Resp. Ex. 1, p. 131; Hrg. Tr., pp. 17-18)

8. On October 15, 2013, Muche left another voicemail for Respondent, stating that Respondent would be given a final extension to October 29, 2013 to provide a written response. She also requested that Respondent provide a copy of text messages between Respondent and Patient A. (Resp. Ex. 1, p. 129)

9. On October 21, 2013, Respondent called Muche, stating that she and her husband were in Phoenix, Arizona because her husband has an immune system disease and an endocrine issue, that she had a more mild case of the same problems and that they could not stay in Wisconsin. She stated that she was working on her response and was told that she should request the text messages from her telephone company. (Resp. Ex. 1, p. 128)

10. On October 28, 2013, Respondent again called Muche and stated that the best response she could give by the October 29, 2013 final deadline would be an outline of events which she would email the following day, October 29, 2013. She informed Muche that her husband's immunity issues were causing her to have endocrine issues and that she could not even function that day. She further stated that she is still practicing, whereupon she was told to include a summary of her current practice. (Resp. Ex. 1, p. 127; Hrg. Tr., pp. 12-13, 18)

11. On October 29, 2013, Respondent sent an approximately half-page email to Muche. The email provided a very brief description of some of Patient A's symptoms, explained that during the week of Patient A's suicide, Patient A and Respondent had plans to see Patient A's primary physician together, and informed the Division that Respondent was currently seeing "about half her caseload" due to her medical conditions. Respondent also stated:

- "A number of complications have prevented me from responding to this complaint, including serious medical issues, initially with my husband, and now, myself."

- “This is the first written contact regarding this complaint and a more full explanation will follow in approximately one to two weeks. I will contact [Muche] if any further delay is necessary.”
- “I will send full dates of service and a full summary of [Patient A’s] treatment in a letter to the Investigator.”
- “I can provide a full chronology of her treatment in my next communication. . .”
- “Please accept this [as] my initial response, but by no means, full disclosure of her assessment, diagnoses, treatment and my supervision of the case.”

(Div. Ex. A, p. 7)

12. On January 14, 2014, an offer of resolution was mailed to Respondent, which required a response by February 17, 2014. (Hrg. Tr., pp. 13-14)

13. On February 25, 2014, Division counsel emailed Respondent noting that Respondent had not responded to the Division’s offer of resolution and stating that if they were unable to resolve the matter, the Division would have to file a formal disciplinary Complaint against Respondent. (Resp. Ex. 1, p. 7; Hrg. Tr., p. 14)

14. On March 31, 2014, Respondent and Division counsel spoke by telephone. Respondent indicated she was residing in Phoenix, Arizona, that she only received one or possibly two letters from the Division, and that any mail which goes to Wisconsin is probably kept by her husband, who she cannot trust to tell her about it or send it. Division counsel re-sent the offer of resolution by email that day, stating his view that the offer he previously sent to her in January 14, 2014 was still a reasonable resolution. (Resp. Ex. 1, pp. 4, 10)

15. During a subsequent phone call that same day, March 31, 2014, Respondent told Division counsel she did not do anything wrong, that she was suffering from mold toxicity as were other people who had been in her building, including four with cancer, two who were dead and 20 others who were sick. She stated that her adrenals were not working, nor were her thyroid, pituitary and hypothalamus. Respondent was crying and said she would call back. She later emailed counsel and informed him she was not able to speak with him further that day “in the manner and with the poise that I will need to discuss this understandably serious matter.” The two agreed that they would speak again on April 2, 2014. (*Id.*)

16. On April 2, 2014, Respondent and Division counsel had a long telephone conversation, in which, among other things, counsel explained that Respondent needed to respond to the allegations and also provide an explanation regarding her failure to respond to prior requests for such information. Respondent began to inform counsel of her health issues and how it kept her from keeping appointments. Counsel requested details in writing about her current practice. Respondent asked for 14 days to provide a response, to which counsel agreed. (Resp. Ex. 1, pp. 2-3)

17. On April 23, 2014, after the 14 days had expired, Respondent emailed Division counsel stating that she was “in the process of gathering information to do the most thorough response that can be provided for you.” (Resp. Ex. 1, p. 14)

18. On July 22, 2014, Division counsel left a voicemail for Respondent. She responded by email on July 28, 2014, stating that she would contact him on July 28, 2014 to discuss her unforeseen delay in providing the information to him. (Resp. Ex. 1, pp. 8, 15, 20)

19. On August 7, 2014, Respondent emailed Division counsel stating that she was consulting with an attorney and had compiled much of the information. She apologized for the delays and stated that many unforeseen and serious issues had presented in the last few months. She stated she would have her attorney contact him as soon as possible and that she was aware that time is of the essence. (Resp. Ex. 1, p. 6)

20. On November 19, 2014, the Complaints were served on Respondent in the above-captioned matters.

21. On March 2, 2015, after hiring counsel, Respondent provided an approximately eight-page summary entitled, “Treatment of [Patient A],” as part of her Response to Interrogatories and Requests for Production. (Div. Ex. A, pp. 3, 5, 8-15)

Respondent’s Health Issues and Current Practice

22. At the March 23, 2015 hearing held in these matters, Respondent testified extensively regarding her health concerns, including the following:

- Respondent’s illness has been “a ten-year situation” and involved pending litigation. She had been seeing physicians since 2006 but for a long time, no one knew what was wrong with her. Respondent believes that she and her husband are ill due to hidden black mold and other toxins in the office building where she practiced for approximately six and a half years. She fled the building in 2010, leaving everything there, after two clients had respiratory distress, and started a new practice in a different building. (Hrg. Tr., pp. 23-24)
- After she left this building, she was “allergic to everything.” (Hrg. Tr., pp. 37-38)
- Respondent moved into a new, safe building but was getting contaminated mail from the first building and received no cooperation from the City of Brookfield Post Office or the Brookfield building investigator. She therefore kept getting exposed for almost two years before she could get the mail cut off. Her home was also cross-contaminated. (Hrg. Tr., pp. 25- 27)
- The first doctors she saw told her she was allergic to mold. She had some treatment but it did not work so she kept researching and finding different people to consult. In October 2012, she started treatment for “severe mold toxicity” through one of her primary doctors, in conjunction with an “environmental specialist.” (Hrg. Tr., p. 24)

- Beginning in 2012 or 2013, Respondent moved offices four times in three years. She moved into a medical arts building which also turned out to be water-damaged and moldy, despite the fact that surgeons and other doctors also practiced there. Her face became “absolutely raw and red” while practicing in that building. The building’s maintenance people told her that the room was “completely normal.” However, her clients were having symptoms and when her husband would walk in, he would get sick and could not even be in the building. (Hrg. Tr., pp. 25-26, 30)
- She left this building and moved to another building. However, it was next to a yoga clinic and she could not be in this building either because of the moisture and incense. (Hrg. Tr. pp. 30-31)
- She went on emergency leave in approximately April of 2013 and she and her husband went back to all of their doctors and told them their treatments were not working. (Hrg. Tr., pp. 26, 29)
- Respondent saw Dr. Glenn Toth in the summer of 2013 and was diagnosed with “severe adrenal issues, almost flat-lines adrenals.” She explained this is “[w]here you’re supposed to be up in the morning so your body wakes, mine was almost at the bottom . . . when you’re about to go to sleep.” At the time she was treating Patient A (March-June of 2013), she had “flat-lined adrenals.” (Hrg. Tr., p. 44)
- In October of 2013, Respondent began the process of moving to Arizona. At the time of the March 23, 2015 hearing, the move was still in process. She ended up moving into a moldy building in Arizona too. (Hrg. Tr., pp. 32, 40, 72)
- At the time of the hearing, Respondent was residing in Arizona two to three weeks per month and was in Wisconsin one week per month or, if she was feeling better, came to Wisconsin twice per month. She sees patients in Wisconsin through Skype and phone sessions, and when in Wisconsin, meets her patients at public libraries, outside, or in the patients’ homes in places such as Waukesha, New Berlin and Menomonee Falls. She cannot be in any public buildings in the Milwaukee area. However, some of her clients live in the Milwaukee area and she occasionally does home visits with patients who live in the Milwaukee area. Although she was cross-contaminated by mail coming from Milwaukee buildings, she was not cross-contaminated by her patients who resided in the Milwaukee area. (Hrg. Tr., pp. 41-43)
- At the time of the hearing, her health condition was “improving” and she was “about 50 percent better.” During the three months prior to hearing, she and her husband “had a pretty big boost in the progress.” She was continuing to treat with a physician for her condition and she sees two specialists in Arizona, one of them a mold toxicity specialist. According to Respondent, mold toxicity affects adrenals, the endocrine system, energy, and the ability to recall words. (Hrg. Tr., pp. 32-33)

- Since August 1, 2011, Respondent has been a patient with Dr. Toth, whom she last saw in the summer of 2013. In a letter dated March 16, 2015, Dr. Toth states that Respondent was being treated for adrenal issues. He expressed his belief that Respondent may safely treat her patients, as long as she limits treatment to approximately ten hours per week. He had conducted two telephone consultations, on July 24, 2014 and January 26, 2015, and concluded, based on a reasonable degree of professional certainty, that she possesses no illness or condition that presents an unacceptable risk which would prohibit her from practicing social work. (Resp. Ex. 3; Hrg. Tr., pp. 34-36, 44)
- Respondent currently has a “serious medical condition.” Dr. Toth has referred her to a specialist and, to the best of her knowledge, her current diagnosis is Chronic Inflammatory Response Syndrome (CIRS), which she states comes only from toxin exposure. (Hrg. Tr., pp. 37-38)
- At the hearing, Respondent claimed to be experiencing allergic reactions to the hearing room, to exhaust, and possibly to formaldehyde, which she stated could be resulting in her being less articulate than usual, having a red face and a “gravelly” voice. (Hrg. Tr., pp. 29-30, 33)

23. With regard to her practice over the past several years, Respondent explained that until the last year, her practice was full, seeing 25-35 clients per week, and getting referrals and taking them. However, her practice is currently about five to seven people per week. She currently has approximately ten clients in Wisconsin and is practicing at less than ten hours per week. At the time of the hearing, she had not yet opened up a practice in Arizona and had no clients there. She did not plan to take clients or increase her practice to more than ten hours per week until her health improved. (Hrg. Tr., pp. 22-23, 28-32, 36)

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. Saulter*, 60 F.3d 270, 280 (7th Cir. 1995).

Violation

The Division alleges that Respondent engaged in unprofessional conduct by failing to cooperate with an investigation of her practice of clinical social work and marriage and family therapy. In support of this assertion, the Division relies on Wis. Stat. § 457.26(f) and Wis. Admin. Code § MPSW 20.02. Wisconsin Stat. § 457.26(f) provides that the appropriate section of the Board may reprimand a credential holder or deny, limit, suspend, or revoke a credential if

it finds that the credential holder has “[e]ngaged in unprofessional or unethical conduct in violation of the code of ethics established in the rules promulgated under s. 457.03 (2).”

Unprofessional conduct is not defined by the Wisconsin Statutes or Administrative Code, except to the extent that Wis. Admin. Code § MPSW 20.02 contains a list of acts which constitute unprofessional conduct. Curiously, unlike the definition of unprofessional conduct pertaining to many other professions, neither failure to cooperate with the Board section’s investigation nor failure to provide a timely response to the Board section’s request for information is specifically listed as an act constituting unprofessional conduct in Wis. Admin. Code § MPSW 20.02. *Compare, e.g.,* Wis. Admin. Code § Med 10.03(3)(g) (Unprofessional conduct includes: “After a request by the board, failing to cooperate in a timely manner with the board’s investigation of a complaint filed against a license holder. There is a rebuttable presumption that a credential holder who takes longer than 30 days to respond to a request of the board has not acted in a timely manner.”); Wis. Admin. Code § PSY 5.01(24) (Unprofessional conduct includes: “Failure to respond honestly and in a timely manner to a request for information from the board or with any other request for information by the board. Taking longer than 30 days to respond creates a rebuttable presumption that the response is not timely.”)

The Division notes that Wis. Admin. Code § MPSW 20.02 specifically states that unprofessional conduct “includes, but is not limited to” the enumerated conduct and that it is therefore clear that the list is not exhaustive and that other conduct not listed may be considered unprofessional conduct. In addition, the Division notes that the purpose of licensing requirements is to protect the public health, safety and welfare and that this purpose is undermined if licensees may refuse to cooperate with the Board’s investigations of their conduct. Relying on *Strigenz v. Dentistry Examining Board*, 103 Wis. 2d 281, 307 N.W.2d 664 (1981), the Division asserts that it is unprofessional conduct to fail to cooperate with an investigation. *See Strigenz*, 103 Wis. 2d at 291 (“This court holds the Dentistry Examining Bar has authority. . . to discipline a licensed dentist for “unprofessional conduct” . . . based on findings of fact of a failure to meet minimal standard of acceptable dentistry, without enactment of specific rules prohibiting such acts.”)

At hearing, counsel for Respondent appeared to concede that failure to cooperate with an investigation constitutes unprofessional conduct but argued that Respondent’s cooperation was sufficient, particularly given that failure to cooperate is not specifically listed in the conduct constituting unprofessional conduct. (Hrg. Tr., p. 63)

I am convinced by the Division’s arguments and by Respondent’s apparent concession on this issue that failure to cooperate with an investigation constitutes unprofessional conduct. I further conclude that Respondent’s failure to provide, in a timely manner, the requested information related to the Division’s investigation constitutes a failure to cooperate.

The Division sent its first request for information regarding Respondent’s treatment of Patient A on July 26, 2013. A response was due August 8, 2013. A substantive response to the requested information was not provided until approximately a year and seven months later, on March 2, 2015, after Respondent had retained counsel. Up until that point, Respondent’s communications with the Division were simply promises to respond, excuses for not responding, or, in the case of the October 29, 2014 email from Respondent to the Division, providing a nominal portion of the information requested, along with more promises to provide the

information requested. The Division gave Respondent ample opportunity to comply with the request before filing its Complaints. The Complaints were not served until November 19, 2014, over a year from the date the information was originally due. Throughout that time, the Division made repeated attempts to obtain the information requested and provided repeated extensions for Respondent to provide the information and settle the matter without formal disciplinary proceedings. Respondent refused to do so, claiming that her health prevented her from complying. I do not find credible Respondent's claim that her reaction to mold and other substances prevented her from providing the information requested by the Division for over a year and half. During that same time period, Respondent continued to see clients, at times, her full caseload of clients, moved from office to office, began the process of moving from Wisconsin to Arizona and made repeated trips between the two states. The fact that a substantive response was provided so late, without adequate justification for the delay, constitutes unprofessional conduct.

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 licenses be indefinitely suspended until she complies not only with the Division's requests for information which were pending at the time the Complaints were filed, but also until she complies with any additional requests for information pertaining to her treatment of Patient A. Further, in light of Respondent's testimony regarding her medical issues, the Division requests that her licenses be indefinitely suspended until the Marriage and Family Therapy Section of the Board (Section) is satisfied that Respondent does not have an impairment due to illness which undermines her ability to safely practice. *See* Wis. Admin. Code § MPSW 20.02(9) (unprofessional conduct includes "[p]racticing or attempting to practice while the credential holder is impaired due to the utilization of alcohol or other drugs, or as a result of an illness which impairs the credential holder's ability to appropriately carry out the functions delineated under the credential in a manner consistent with the safety of a client, patient, or the public.")

I do not find the Division's recommendation appropriate under the circumstances here. The Division's initial request was for "a detailed written description of the treatment [Respondent] provided [Patient A], responding to the allegations." The allegations were that Patient A sent Respondent texts which were suicidal in nature, that Respondent delayed responding to her and failed to notify anyone to check up on Patient A for 16 hours, and that Respondent repeatedly cancelled appointments with Patient A. The Division also made follow-up requests for information regarding Respondent's current practice and for text messages between Respondent and Patient A, the latter of which was provided by Patient A's family rather than by Respondent. (Resp. Ex. 1) Respondent's March 2, 2015 response, while untimely, covered the information requested. Although the Division stated at hearing that there were contradictions between the March 2, 2015 response and the texts between Respondent and Patient A, the issue for hearing was not whether there were contradictions between certain documents but whether Respondent complied with the requests for information. If the Division wishes to obtain further information regarding Respondent's treatment of Patient A which was not included in Respondent's March 2, 2015 response, it should request the information.

Hopefully, Respondent has learned from these proceedings that she must provide a timely response, lest she expose herself to further disciplinary proceedings and further action against her licenses. Alternatively, if the Section or Division believes there is sufficient information based on Respondent's March 2, 2015 response and the alleged contradictory information to issue Complaints with respect to Respondent's treatment of Patient A, it presumably has that option.

Likewise outside the scope of these proceedings is the Division's request that Respondent's license be indefinitely suspended until the Section is satisfied that Respondent has no impairment affecting her ability to safely practice. The Complaint in these matter addressed only the issues of Respondent's failure to cooperate with an investigation, not any impairment issues. Thus, the issues for determination are whether Respondent failed to cooperate with the Division's investigation, and if so, what discipline and costs are appropriate *for this violation*. Respondent was not on notice prior to hearing that the Division might also seek to impose discipline based on impairment issues. If the Division or Section is concerned that Respondent has impairment issues, it should take whatever action it deems appropriate within the confines of the law. As it stands on the record before this tribunal, the only medical opinion which has been provided is Dr. Toth's March 16, 2015 letter, which states that Respondent is able to treat patients, provided she limits treatment to ten hours per week, which Respondent appears to be doing. If the Division or Section questions Dr. Toth's opinion and has remaining concerns regarding Respondent's fitness for practice, then it is up to the Division or Section, not this tribunal, to pursue that issue.

Based on the allegations charged and the record before this tribunal, I conclude that the objectives of *Aldrich* are best served by a reprimand. Reprimanding Respondent will protect the public and serve to rehabilitate Respondent in that it holds her accountable for her failure to make the Division's request for information a priority, thereby delaying an investigation into her conduct with a patient. It also serves to deter others from such dilatory conduct. In rejecting the indefinite suspension recommended by the Division, however, the ordered discipline also takes into account that the allegation in this matter involved a failure to cooperate with requests for information, not impairment issues, and that Respondent ultimately provided a lengthy response, albeit over a year and a half later. The ordered discipline also takes into account that Respondent has been practicing for approximately 25 years with no prior discipline. In view of the foregoing, I conclude a reprimand is appropriate.²

Costs

The Division has the authority to assess the costs of disciplinary proceedings 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

² I also note that this discipline is consistent with the discipline recently requested by the same Division attorney and ordered in a proposed decision in another matter involving an untimely response to a request for information by the Division. See *In the Matter of the Disciplinary Proceedings Against Randi Erickson*, Case No. SPS-14-0087 (Proposed Decision and Order issued March 26, 2015, awaiting final decision by Wisconsin Psychology Examining Board).

agency, funded by other licensees. See *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, Order No. LS0802183CHI (Aug. 14, 2008).

The Division requests that full costs be imposed on Respondent, whereas Respondent argues that she should bear no costs. I conclude that Respondent should bear 50 percent of the costs of these proceedings. Applying the factors of *Buenzli-Fritz*, I note that there was only one count charged and proven with respect to each of Respondent's licenses. Respondent's conduct was serious, particularly in that it delayed an investigation into Respondent's care of a patient. However, the conduct ultimately involved a delay in substantively responding to the Division's requests, not complete disregard of the Division's requests. Moreover, while the discipline sought by the Division was an indefinite license suspension, a reprimand was ordered, and Respondent, although extremely dilatory in providing a response to the Division's request, has been cooperative in the disciplinary proceedings before this tribunal. Finally, while Respondent has no prior discipline in her approximately 25 years of practice, it would be unfair to have Respondent's fellow licensees, who have not engaged in misconduct, absorb the majority of the costs resulting from Respondent's unprofessional conduct.

CONCLUSIONS OF LAW

1. The Division met its burden of establishing by a preponderance of the evidence that Respondent engaged in unprofessional conduct under Wis. Stat. § 457.26(f) and Wis. Admin. Code § MPSW 20.02 by failing, for approximately a year and seven months, to provide a substantive response to the Division's request for information involving Respondent's care of a patient.

2. Reprimanding Respondent is warranted based on the facts of record and the criteria delineated in *Aldrich*.

3. Imposition of 50 percent of the costs of these proceedings on Respondent is appropriate based on the Department's prior decision in *Buenzli-Fritz*.

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED:

1. Respondent is REPRIMANDED.

2. Respondent shall pay 50 percent of 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**

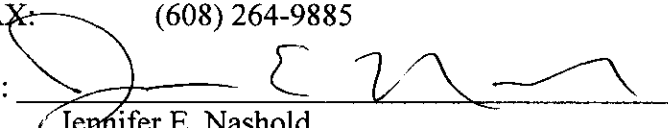
3. The terms of this Order are effective the date the Final Decision and Order is signed by the Section.

4. The above-captioned matter is hereby closed as to Respondent Ellen Pederson-Lewis.

Dated at Madison, Wisconsin on May 5, 2015.

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