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**Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

In the Matter of Disciplinary Proceedings Against
Nicholas W. Bonner, Respondent

FINAL DECISION AND ORDER

Order No. 0004336

Division of Legal Services and Compliance Case No. 14 RSG 003

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 10th day of November, 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**

In the Matter of Disciplinary Proceedings Against
Nicholas W. Bonner, Respondent

DHA Case No. SPS-15-0078
DLSC Case No. 14 RSG 003

PROPOSED DECISION AND ORDER

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

Nicholas W. Bonner
7326 W. Honey Creek Dr., Apt. 3
Milwaukee, WI 53219-3966

Wisconsin Department of Safety and Professional Services
P.O. Box 8368
Madison, WI 53708-8366

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

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

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a formal Notice of Hearing and Complaint against Respondent Nicholas W. Bonner (Respondent). The Complaint alleged that Respondent's permit was subject to disciplinary action pursuant to Wis. Stat. § 440.26(6) and Wis. Admin. code § SPS 35.01 because Respondent: (1) engaged in conduct reflecting adversely on his 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; and (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.

The Division served Respondent on August 21, 2015, by sending a copy of the Notice of Hearing and Complaint to his 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 telephone prehearing conference held before the Division of Hearings and Appeals on September 21, 2015.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to appear for the prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default and issued a Notice of Default and Order on September 21, 2015. Consistent with the notice, the Division filed a recommended proposed decision on October 9, 2015.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1–6 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Nicholas W. Bonner is permitted in the State of Wisconsin to practice as a private security person, having permit number 44861-108, first issued on March 2, 2012, and expired on September 1, 2014.

2. Respondent retains the right to renew his private security permit until August 31, 2019, pursuant to Wis. Stat. § 440.08(3).

3. Respondent's most recent address on file with the Department is 8545 W. Beloit Rd., Apt. 3002, Milwaukee, Wisconsin 53227-3774.

4. On June 21, 2013, Respondent was convicted of misdemeanor disorderly conduct in Milwaukee County Circuit Court (Case No. 13CM0671).

5. Respondent's address as identified in Milwaukee County Circuit Court records (Case No. 13CM0671) was 2234 S. 81st St., West Allis, Wisconsin 53219.

6. Respondent failed to notify the Department in writing of the conviction within 48 hours after entry of the judgment of conviction or the judgment finding that Respondent committed the violation.

7. The criminal complaint filed against Respondent in Case No. 13CM0671 originally charged Respondent with two counts, one for misdemeanor battery, domestic abuse; and the other for disorderly conduct, domestic abuse. The criminal complaint alleges that on January 31, 2013, Respondent grabbed his live-in girlfriend's arm to prevent her from leaving their home, causing bruising, and that in the process he destroyed personal property. It also alleges that the girlfriend's four year-old daughter attempted to intervene, whereupon Respondent pushed the child and then struck his girlfriend in the face, causing her lips to bleed. (Criminal Complaint, filed by the Division on October 9, 2015)

Facts Related to Default

8. The Complaint and Notice of Hearing in this matter were served on Respondent on August 21, 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.”

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 September 21, 2015. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which he could be reached no later than September 16, 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.”

11. Respondent failed to provide a telephone number at which he could be reached for the prehearing conference.

12. At the prehearing conference held on September 21, 2015, the Division provided a telephone number for Respondent at which the ALJ attempted to contact Respondent three times. The message at the telephone number provided stated the recipient was “unavailable,” and there was no opportunity to leave a message for Respondent. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

13. On September 21, 2015, the ALJ issued a Notice of Default and Order, requiring the Division to serve no later than October 12, 2015, a recommended proposed decision and order.

14. The Division timely filed its recommended proposed decision and order on October 9, 2015.

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

Default

As stated in the September 21, 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 September 21, 2015. As a result, an order may be entered against him 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).

Violations of Wis. Stat. § 440.26(4m)(b) and (6), and Wis. Admin. Code § SPS 35.01(2)

The Division alleges that Respondent is subject to discipline pursuant to Wis. Stat. § 440.26(6), which states, in relevant part:

(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 111.335.¹

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.

The Division further alleges that Respondent is subject to discipline for engaging in unprofessional conduct under Wis. Admin. Code § SPS 35.01(2) which states:

Unprofessional conduct. 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 judgment of conviction or the judgment finding that the person committed the violation, a copy of the complaint or other information which describes the nature of the crime or conviction and the judgment of conviction in order that the department may determine whether disciplinary action must or should be taken against credential holder.

I conclude that Respondent violated a law the circumstances of which substantially relate to the practice of private security person and by failing to notify the Department of his conviction within 48 hours. The undisputed facts establish that on June 21, 2013, Respondent was convicted of misdemeanor Disorderly Conduct, Domestic Abuse in Milwaukee County Circuit Court Case Number 2013CM000671. The circumstances surrounding this violation substantially relate to Respondent's practice as a private security person as Respondent used force, not to protect, but to harm his girlfriend and a defenseless child, and to damage property. Such actions

¹ 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.

go against the very traits required of a private security person. Further, the Department has previously found convictions for disorderly conduct substantially related to the practice of a private security person for the purpose of imposing discipline. See *In the Matter of the Disciplinary Proceedings Against Andrea M. Murphy-Brooks*, ORDER0003609 (Dec. 29, 2014); *In the Matter of the Disciplinary Proceedings Against Todd Edmonds*, ORDER0002317 (Feb. 26, 2013); *In the Matter of Disciplinary Proceedings Against Ware A. Burnette*, ORDER0001961 (Aug. 7, 2012); *In the Matter of Disciplinary Proceedings Against Kevin M. Berg*, ORDER0001529 (May 9, 2012). Based on the facts of this case, previous orders, and that Respondent has made no argument to the contrary, I conclude that Respondent engaged in unprofessional conduct and in conduct reflecting adversely on his profession by violating a law the circumstances of which substantially related to his professional qualification, in violation of Wis. Stat. § 440.26(6)(a)1., 2. and 4., and Wis. Admin. Code § SPS 35.01(2).

Further, the undisputed facts 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).

As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 440.26(6)(a)1., 2., 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 credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division requests that Respondent’s right to renew his 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).

Even though Respondent’s permit is currently expired, it is appropriate and necessary to impose discipline. Wisconsin Stat. § 440.08(3)(a) allows the holder of a credential to restore the credential even after expiration by simply paying the application renewal fee and a late renewal penalty of \$25. Under subparagraph (b), the Department is empowered with the ability to

promulgate rules requiring credential holders who have failed to renew the credential for five years to complete additional requirements to restore their licenses. *See* Wis. Stat. § 440.08(3)(b). Read together, these provisions have been reasonably interpreted by the Department to mean that credential holders retain a right to automatically renew their credentials within five years of expiration by simply paying the required fees. Thus, Respondent has an automatic right to renew his license until August 31, 2019, just by paying these required fees.

The same reasons justifying discipline in cases in which the respondents are currently permitted apply to this case as Respondent may renew his permit at any time. *See In the Matter of the Disciplinary Proceedings Against Todd Edmonds*, LS-0002317 (Feb. 26, 2013), *citing In the Matter of Disciplinary Proceedings Against Paul S. George, Dean K. George, and George Auction Services*, LS-9804151-AUC (Nov. 18, 1999).

Private security persons are charged with protecting the public, keeping the peace, and preventing the occurrence of criminal actions. With this considerable authority comes an equal degree of responsibility. Contrary to this, Respondent used force to harm his girlfriend and her child while destroying personal property. This further demonstrates Respondent's continuous lack of respect for both the law and the public. Thus, Respondent has failed to fulfill the responsibilities of his profession, and as such, is not fit to be a permitted private security person.

In addition to ignoring the requirements of the law, Respondent has also ignored the Department's legitimate authority. Respondent did not disclose his conviction within the required time frame. Respondent has been nonresponsive throughout the Department's investigation and in this proceeding. When individuals demonstrate an inability to handle the amount of responsibility commensurate with holding professional permits, they should not continue to be entrusted with that permit. Therefore, revocation of Respondent's right to renew his permit is an appropriate response to his disrespect for the law, the public welfare, and the licensing authority governing his profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is unlikely here. Respondent has avoided every opportunity to comply with the reporting requirements of his permit, which exist to ensure the continuing competence of the credential holder. Because 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 right to renew would set a strong precedent 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 and the factors set forth in *Aldrich*, revocation of Respondent's ability to renew his permit is warranted.

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 prior to the Department's consideration of any future application by Respondent for any credential. The Division asserts that this request is consistent with Department practice when dealing with an expired permit.

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 credentials, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the credential holders 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 the event he seeks to apply for any credential with the Department in the future. Respondent, by nature of being in default, has not presented any mitigating evidence that would suggest the full imposition of costs is inappropriate. On the contrary, Respondent's violations evidence conduct of a serious nature. Respondent has been convicted of a violation that indicates lack of respect for the law and the public welfare, has not properly informed the Department of this conviction, 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 his profession who have not engaged in such conduct.

ORDER

Accordingly, IT IS ORDERED that Respondent Nicholas W. Bonner's right to renew his private security person permit (#44861-108) pursuant to Wis. Stat. § 440.08(3)(a) is hereby REVOKED, effective on the date the final decision is signed by the Department.

IT IS FURTHER ORDERED that should Respondent ever apply for a credential with the Department in the future, Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18, prior to the Department's consideration of any such application.

Dated at Madison, Wisconsin on October 16, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____

Jennifer E. Nashold
Administrative Law Judge