

## 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  
Michael A. Lock, Jr., Respondent

FINAL DECISION AND ORDER

**0004762**

Order No. \_\_\_\_\_

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**Division of Legal Services and Compliance Case No. 14 RSG 029**

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 15<sup>th</sup> day of June, 2016.

A handwritten signature in black ink, appearing to read "Michael J. Berndt".

\_\_\_\_\_  
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  
Michael A. Lock, Jr., Respondent

DHA Case No. SPS-16-0028  
DLSC Case No. 14 RSG 029

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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:

Michael A. Lock, Jr.  
7120 W. Villard Avenue  
Milwaukee, WI 53210

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 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 Michael A. Lock, Jr. (Respondent). The Complaint alleged Respondent's credential 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 his professional qualification pursuant to Wis. Admin. Code § SPS 35.01(8) by violating a state law related to the care, handling or use of firearms or other dangerous weapons; and (2) engaged in conduct reflecting adversely on his professional qualification pursuant to Wis. Admin. Code § SPS 35.01(2) by violating a law the circumstances of which substantially relate to the practice of a private security person.

The Division served Respondent on March 22, 2016, 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 within 20 days from the date of service, 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 April 21, 2016.

At the April 21, 2016 telephone prehearing conference, 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 April 21, 2016.

Later in the day on April 21, 2016, Respondent's wife called the Division of Hearings and Appeals (DHA) to state she and Respondent had just received notice of the prehearing conference. Per the ALJ's suggestion, Respondent's wife called the Division to request another prehearing conference be scheduled. Following a discussion between Respondent and the Division, the Division emailed the ALJ and Respondent at the email address Respondent provided. In its email, the Division agreed to reschedule the prehearing conference; requested the ALJ allow the parties a few weeks to discuss settlement; and requested the ALJ set a new deadline for Respondent's Answer, as he had not yet filed one.

On April 22, 2016, the ALJ issued an Order: (1) vacating the April 21, 2016 Notice of Default and Order; (2) providing notice of an additional telephone prehearing conference scheduled for May 9, 2016; and (3) extending the deadline for Respondent's Answer to May 4, 2016. Respondent failed to file an Answer to the Complaint by the extended deadline of May 4, 2016 and failed to appear at the rescheduled telephone prehearing conference held before the ALJ on May 9, 2016.

At the rescheduled May 9, 2016 telephone prehearing conference, the Division again 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 either prehearing conference, the ALJ found Respondent to be in default and issued a Notice of Default and Order on May 10, 2016. The Division timely filed a recommended proposed decision and order.

## 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 Michael A. Lock, Jr. is permitted in the State of Wisconsin as a private security person, having permit number 42914-108, first issued on April 8, 2011, and current through August 31, 2016.

2. Respondent's most recent address on file with the Department is 7120 West Villard Avenue, Milwaukee, Wisconsin 53210.

3. On May 25, 2012, Respondent was charged with Carrying a Concealed Weapon in violation of Wis. Stat. § 941.23(2), Misdemeanor A, in Milwaukee County Circuit Court Case Number 2012CM002906.

4. The Criminal Complaint alleged that, during a traffic stop, police officers observed a loaded .40 caliber semi-automatic handgun resting on the driver's side floorboard of Respondent's car. Respondent informed the officers he had just left work as a security guard and forgot to leave the handgun at home.

5. On January 25, 2013, Respondent was convicted by guilty plea of Carrying a Concealed Weapon in violation of Wis. Stat. § 941.23(2), Misdemeanor A.

6. On February 6, 2013, Respondent was ordered to serve thirty days in the House of Corrections with credit for two days time served and was ordered to pay all applicable court costs and surcharges from bail on deposit.

#### Facts Related to Default

7. The Notice of Hearing and Complaint in this matter were served on Respondent on March 22, 2016, 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." A signature appears on the certified mail return receipt card for the Notice of Hearing and Complaint sent to Respondent at his Villard Avenue address on file with the Department.

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

9. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for April 21, 2016. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which he could be reached no later than April 18, 2016. 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." The Notice was sent to Respondent's Villard Avenue address on file with the Department. On April 12, 2016, the Notice was returned to the DHA by the U.S. Postal Service with a forwarding address of 3850A N. 21<sup>st</sup> Street in Milwaukee. On April 13, 2016, DHA re-sent the Notice to the 21<sup>st</sup> Street address.

10. Respondent failed to provide a telephone number and could not be reached for the April 21, 2016 prehearing conference.

11. Based on the Respondent's failure to Answer the Complaint and failure to appear at the April 21, 2016 prehearing conference in this matter, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

12. On April 21, 2016, the ALJ issued a Notice of Default and Order finding Respondent to be in default and ordering the Division to file and serve no later than May 5, 2016, a recommended proposed decision and order.

13. Later in the day on April 21, 2016, the following occurred:

a. Respondent's wife called DHA to state she and Respondent had just received notice of the prehearing conference. Respondent's wife verified that the Villard Avenue mailing address previously used by DHA was correct. The ALJ recommended Respondent and his wife call the Division to discuss the matter.

b. Respondent and his wife called the Division to request another prehearing conference be scheduled. During this conversation, Respondent verified his contact information, including his mailing address, email address and telephone number. He verified the Villard Avenue mailing address on file with the Division, to which the Division sent its Complaint and the ALJ sent the Notice of Telephone Prehearing Conference, was his correct address.

c. The Division emailed the ALJ and Respondent, at the email address he provided. In its email, the Division agreed to reschedule the prehearing conference, requested the ALJ allow the parties a few weeks to discuss settlement, and requested the ALJ set a new deadline for Respondent's Answer, as he had not yet filed one.

14. On April 22, 2016, the ALJ issued an Order: (a) vacating the April 21, 2016 Notice of Default and Order; (b) providing notice of an additional telephone prehearing conference scheduled for May 9, 2016; and (c) extending the deadline for Respondent's Answer to May 4, 2016. On April 25, 2016, the Order sent to Respondent at the Villard Avenue address, which Respondent and his wife had confirmed, was returned to DHA by the U.S. Postal Service without a forwarding address. On May 2, 2016, it was re-sent to the N. 21<sup>st</sup> Street address.

15. Respondent failed to file an Answer to the Complaint by the extended deadline of May 4, 2016.

16. Respondent failed to appear at the rescheduled telephone prehearing conference held before the ALJ on May 9, 2016. The ALJ attempted to call Respondent at the telephone number he had confirmed as his, but received his answering machine. The ALJ left a voicemail for Respondent but Respondent never returned the ALJ's call.

17. At the May 9, 2016 rescheduled telephone prehearing conference, the Division again moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

18. On May 10, 2016, the ALJ issued a Notice of Default and Order.

19. In the May 10, 2016 Notice and Default and Order, the ALJ ordered the Division to file and serve no later than May 5, 2016, a recommended proposed decision and order. The ALJ subsequently issued an Amended Notice of Default and Order, which corrected the due date for

the Division's recommended proposed decision and order from May 5, 2016 to May 20, 2016. Both the original and amended Notice of Default and Order sent to the Villard Avenue address, which Respondent and his wife had confirmed, were returned to DHA by the U.S. Postal Service with no forwarding address.

20. The Division timely filed its recommended proposed decision and order.

21. 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 May 10, 2016 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear for telephone prehearing conferences. 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. Admin. Code §§ SPS 35.01(2) and (8)

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.<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.

The Division also alleges that Respondent is subject to discipline pursuant to Wis. Admin. Code § SPS 35.01(2) and (8), which state, in relevant part:

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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.

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. . . .

...

(8) Violating state or federal law rules or regulations related to the care, handling or use of firearms or other dangerous weapons.

The undisputed facts establish that on January 25, 2013, Respondent was convicted of Carrying a Concealed Weapon in violation of Wis. Stat. § 941.23(2), Misdemeanor A, in Milwaukee County Circuit Court (Case No. 2012CM002906). *See Judgment of Conviction* (Feb. 7, 2013). Respondent thereby engaged in conduct reflecting adversely on professional qualification pursuant to Wis. Admin. Code § SPS 35.01(8) by violating a state law related to the care, handling or use of firearms or other dangerous weapons. He also engaged in conduct reflecting adversely on professional qualification pursuant to Wis. Admin. Code § SPS 35.01(2) by violating any law the circumstances of which substantially relate to the practice of a private security person.

The circumstances surrounding Respondent's Carrying a Concealed Weapon conviction substantially relate to his practice as a private security person. Handling a firearm can be a duty assigned to private security persons. Respondent's failure to care for and handle a firearm in a legally responsible fashion is of great concern to potential employers and the Wisconsin citizens Respondent is charged to protect. The specific facts of the Criminal Complaint allege that, during a traffic stop, police officers observed a loaded .40 caliber semi-automatic handgun on the driver's side floorboard of Respondent's car. Respondent informed the officers he had just left work as a security guard and forgot to leave the handgun at home.

The Department has previously found convictions for Carrying a Concealed Weapon substantially related to the practice of a private security person for the purpose of imposing discipline. *See e.g., In the Matter Of Disciplinary Proceedings Against Antwan T. Langford*, ORDER 0002051 (Sept. 19, 2012).

Based on the facts of this case, previous orders, and the fact that Respondent has made no argument to the contrary, I conclude that Respondent engaged in conduct reflecting adversely on his professional qualification, pursuant to Wis. Admin. Code § SPS 35.01(2) and (8). As a result, 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 be reprimanded and that his permit be limited as detailed in the Order below. These limitations include: (1) prohibiting Respondent from carrying or using a firearm in conjunction with employment as a private security person; (2) restricting Respondent from holding a firearms permit issued by the Department or working as a private security person at any site which requires use or possession of a firearm; (3) requiring Respondent to provide a copy of this Order to any and all private security supervisors for whom he works; and (4) requiring Respondent to arrange for submission of quarterly reports. This 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).

Private security persons are charged with protecting the public, keeping the peace, and preventing the occurrence of criminal actions. Additionally, private security persons are permitted to carry firearms in the course of their duties. With this considerable authority comes an equal degree of responsibility. Contrary to this, Respondent has violated a law regarding handling and care of a firearm. Respondent’s conduct demonstrates either a lack of respect for the law or ignorance of the law regarding handling a firearm. Firearm regulations are paramount to protecting the public. Accordingly, Respondent has failed to fulfill the responsibilities of his profession, and discipline is necessary.

A reprimand is the Department’s mechanism to publicly warn the holder of a credential of his wrongdoing. This discipline is less serious than what could have been sought under Wis. Stat. § 440.26(6), allowing Respondent to continue to practice as a private security person in Wisconsin while warning him and the public of the violation.

Furthermore, it is appropriate and necessary to limit Respondent’s private security person permit to restrict his use of a firearm while working as a private security person. Respondent should be prohibited from using or carrying a firearm in conjunction with his employment as a private security person. Given the underlying conviction, this limitation is warranted to ensure the protection of the public while allowing Respondent to maintain his permit and work as a private security person. Moreover, Respondent should be monitored for compliance with this Order. The limitations are necessary for the Department to monitor Respondent and to keep his supervisor informed of the contents of this Order. Monitoring limitations will allow the Department to periodically assess Respondent’s competency to practice private security in Wisconsin. These two-year limitations on Respondent’s private security permit will rehabilitate Respondent, protect the public, and deter future misconduct, thereby fulfilling the purposes of discipline.

In light of the facts of this case and the factors set forth in *Aldrich*, a reprimand of Respondent and the proposed limitations of his private security person permit are warranted.

### 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. Factors which may be considered in assessing costs 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 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.*, LS0802183CHI (Aug. 14, 2008). It is not mandatory that all or any of these factors be considered and it is within the Department's discretion to determine what weight, if any, to give any factors considered.

Particularly relevant are the following considerations. First, the Division proved every count it alleged. This is not a case where the Division wasted resources or incurred additional costs by alleging multiple counts and then failing to prove those counts. Second, Respondent's conduct that led to the discipline at hand resulted from violating a law regarding handling a firearm. Such behavior is troublesome and serious. Third, as a result of Respondent's conduct, the Division sought to reprimand Respondent and impose multiple limitations on his credential. This discipline was imposed and is significant. Fourth, Respondent did not cooperate with the hearing proceedings. After Respondent failed to appear at the first prehearing conference, the ALJ granted his request to reschedule the conference, which he then chose not to attend. He failed to file an Answer to the Complaint, even after the deadline for doing so was extended. Fifth, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. As such, fairness weighs heavily in requiring Respondent to pay the costs of this proceeding which resulted in discipline, rather than spreading the costs among all credentialed private security persons in Wisconsin.

Based on the facts of this case and considering the factors delineated in the *Buenzli-Fritz* decision, Respondent is assessed the full amount of recoverable costs in this case.

### ORDER

Accordingly, IT IS ORDERED that Respondent Michael A. Lock, Jr. is hereby REPRIMANDED, effective on the date the Final Decision and Order is signed by the Department.

IT IS FURTHER ORDERED that Michael A. Lock, Jr.'s private security person permit (number 42914-108) is LIMITED as follows:

1. Respondent shall not carry a firearm in conjunction with employment as a private security person.
2. Respondent shall be restricted from holding a firearms permit issued by the Department or working as a private security person at any site which requires use or possession of a firearm.
3. Respondent shall provide a copy of the Final Decision and Order in this matter to his supervisor(s) at all private detective agencies where he is employed as a private security person.
4. Respondent shall arrange for his supervisor(s) at all private detective agencies where he is employed as a private security person to submit quarterly reports to the Department Monitor at the address below. Respondent's supervisor(s) shall submit such reports beginning three months from the date of the Final Decision and Order in this matter, and every three months thereafter. In each report, Respondent's supervisor(s) shall:
  - a. Describe Respondent's employment activities for the previous three months; and
  - b. Verify that Respondent is in compliance with the laws governing the practice of a private security person and the terms of this Order.
5. Beginning three months from the date of the Final Decision and Order in this matter, and every three months thereafter, Respondent shall submit quarterly reports to the Department Monitor at the address below. Each report shall include the following information:
  - a. The name, address and telephone number of Respondent, and name, address and telephone number of Respondent's supervisor(s) at all private detective agencies where he is employed as a private security person; and
  - b. A signed statement from Respondent certifying that he is in compliance with all terms and conditions of this Order.
6. Respondent shall report to the Department any change of employment status, residence, address or telephone number within five business days of the date of a change. Respondent shall in addition report any arrest or conviction within 48 hours of the arrest or entry of conviction.
7. Respondent is responsible for compliance with all terms and conditions of the Final Decision and Order in this matter, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order by Respondent.
8. After two years of practice in compliance with all terms and conditions of the Final Decision and Order in this matter, Respondent may petition the Department for the modification or termination of the above limitations. The Department may grant or deny

the petition, in its discretion, or may modify this Order as it sees fit. A denial of such a petition for modification or termination shall not be deemed a denial of license under Wis. Stat. §§ 227.01(3) or 227.42, or Wis. Admin. Code Ch. SPS 1, and shall not be subject to any right to further hearing or appeal.

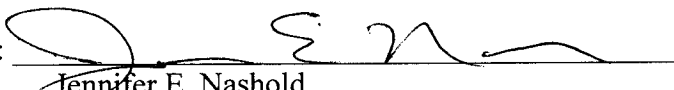
IT IS FURTHER ORDERED in the event Respondent fails to comply with the terms of the Final Decision and Order in this matter, Respondent's permit, or his right to renew his permit, may, in the discretion of the Department, or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Final Decision and Order in this matter.

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. Payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) and any petition to the Board, quarterly reports or other submissions required by this Order shall be sent by shall be sent by Respondent (or others, as appropriate) to the Department Monitor at the address below:

Department Monitor  
Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 7190, Madison, WI 53707-7190  
Telephone (608) 267-3817; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

Dated at Madison, Wisconsin on May 24, 2016.

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

By:   
Jennifer E. Nashold  
Administrative Law Judge