

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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

In the Matter of Disciplinary Proceedings Against
Jonathan J. Pinero-Gaston, Respondent

FINAL DECISION AND ORDER

Order No. **0004842**

Division of Legal Services and Compliance Case No. 14 RSG 030

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 2nd day of August, 2016.

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
Jonathan J. Pinero-Gaston, Respondent

DHA Case No. SPS-16-0039
DLSC Case No. 14 RSG 030

PROPOSED DECISION AND ORDER

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

Jonathan J. Pinero-Gaston
2136 S. 23rd Street
Milwaukee, WI 53215

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 Jonathan J. Pinero-Gaston (Respondent). The Complaint alleged that Respondent's license 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 a law the circumstances of which substantially relate to the practice of a private security person; and (2) 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.

The Division served Respondent on April 18, 2016, by sending a copy of the Notice of Hearing and Complaint to his address on file with the Department by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09(4). Respondent was reached in his vehicle for the May 23, 2016 prehearing conference, and the matter was therefore rescheduled to May 25, 2016, to obtain Respondent's verbal responses to the Complaint. However, Respondent failed to appear at the telephone conference held on May 25, 2016. The ALJ again set over the matter to June 2, 2016. Respondent failed to appear at the conference on June 2, 2016.

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 conferences, the ALJ found Respondent to be in default and issued a Notice of Default and Order on June 2, 2016. Consistent with the notice, the Division filed a recommended proposed decision and order.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-4 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Jonathan J. Pinero-Gaston is permitted by the State of Wisconsin to practice private security, having permit number 46652-108, first issued on December 21, 2012, and current through August 31, 2016.

2. Respondent's most recent address on file with Department is 1001 West Greenfield Avenue, Milwaukee, Wisconsin 53204.

3. During the course of the Department's investigation of this matter, Respondent indicated that his current address is 2136 South 23rd Street, Milwaukee, Wisconsin 53215.

4. On September 25, 2014, Respondent was convicted of Disorderly Conduct, Wis. Stat. § 947.01(1), with the penalty enhancer of Use of a Dangerous Weapon, Wis. Stat. § 939.63(1)(a), a misdemeanor, in Milwaukee County Circuit Court (Case No. 2014CM000031).

5. According to the Criminal Complaint in Case No. 2014CM000031, attached to the Division's Recommended Proposed Decision and Order, a police officer saw Respondent raise his Taurus PT 24/7-G2 firearm and shoot it into the air.

Facts Related to Default

6. The Complaint and Notice of Hearing in this matter were served on Respondent on April 18, 2016, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. 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 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.”

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

8. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a prehearing conference for May 23, 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 for the conference no later than May 18, 2016. Respondent failed to provide a telephone number.

9. At the prehearing conference held on May 23, 2016, the Division provided a telephone number for Respondent, at which the ALJ contacted Respondent. Respondent was in his vehicle at the time and was made aware of his failure to file an Answer to the Complaint. Respondent indicated that he had received the Complaint from the Division and asked that it be read aloud to him. The Division agreed to obtaining Respondent’s verbal responses to the Complaint rather than requiring that he file a written response. However, because Respondent was in his vehicle at the time, the matter was set over to May 25, 2016, to obtain Respondent’s verbal responses to the Complaint.

10. Respondent could not be contacted for the May 25, 2016 conference and did not return the ALJ’s telephone call. Rather than granting a request for default, the ALJ provided a final opportunity for Respondent to appear for a telephone conference. On May 25, 2016, the ALJ issued a notice of final telephone conference scheduled for June 2, 2016, at 11:30 a.m., which was sent to Respondent by both regular mail and email. In the Notice of Telephone Status Conference, the ALJ stated, “If [Respondent] fails to appear at the next-scheduled conference on June 2, 2016, default will be entered against him.” Respondent failed to appear at the conference on June 2, 2016.

11. At the time designated for the conference on June 2, 2016, the ALJ was unable to reach Respondent at the number previously used. The ALJ left a voicemail for Respondent indicating that Respondent should contact the ALJ at the telephone number provided by 11:40 a.m., failing which the ALJ would proceed with the conference without Respondent. However, as of the date of this decision, Respondent has not contacted the ALJ at the telephone number provided by the ALJ.

12. On June 2, 2016, the ALJ issued a Notice of Default and Order, which was amended on June 15, 2016, finding that Respondent was in default and requiring the Division to serve no later than June 21, 2016, a recommended proposed decision and order.

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

14. Respondent did not file a response to either the Amended Notice of Default and Order or to the Division’s submission.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the June 15, 2016 Amended Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the telephone conferences held on May 25, 2016 and June 2, 2016. *See* Wis. Admin. Code §§ SPS § 2.09(4) and 2.14; Wis. Admin. Code § HA 1.07(3). 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).

Unprofessional Conduct pursuant to 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 111.335.¹

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.

Wisconsin Admin. Code § SPS 35.01 further states that 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 violating a law relating to the care, handling, or use of a firearm. Wis. Admin. Code § SPS 35.01(8). The undisputed facts establish that on September 25, 2014 Respondent was convicted of Disorderly Conduct, Wis. Stat. § 947.01(1), with a penalty enhancer of Use of a Dangerous Weapon, Wis. Stat. § 939.63(1)(a), a misdemeanor, in Milwaukee County Circuit Court (Case No. 2014CM000031). Respondent thereby engaged in conduct reflecting adversely on his professional qualification pursuant to Wis. Admin. Code § SPS 35.01(8) by violating a law relating to the care, handling, or use of a firearm.

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.

Conduct reflecting adversely on professional qualification also includes violating any law the circumstances of which substantially relate to the practice of a private security person. Wis. Admin. Code § SPS 35.01(2). Handling a firearm may be a duty assigned to private security persons. If Respondent cannot care for and handle a firearm in a legally responsible fashion, this would be of great concern to potential employers and the Wisconsin citizens Respondent is charged to protect. The specific facts, detailed in the Criminal Complaint, state that a police officer saw Respondent raise his Taurus PT 24/7-G2 firearm and shoot it into the air.

The Department has previously found convictions related to care, handling, or use of a firearm substantially related to the practice of a private security person for the purpose of imposing discipline. See *In the Matter of Disciplinary Proceedings Against Leslie H. George*, ORDER 0004728 (May 23, 2016); *In the Matter of Disciplinary Proceedings Against Michael A. Lock Jr.*, ORDER 0004762 (June 15, 2016).

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 conduct reflecting adversely on his professional qualification, pursuant to Wis. Admin. Code §§ SPS 35.01(2) and (8). 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 be reprimanded and that his permit be limited to: (1) prohibit Respondent from carrying or using a firearm in conjunction with employment as a private security person; (2) prohibit 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) require Respondent to provide a copy of this Order to his current and any future supervisor; and (4) require Respondent to arrange for submission of quarterly reports as detailed in the Order below. 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 as such, discipline is necessary. A reprimand and limitation of his private security person permit will adequately protect the public from other instances of misconduct by Respondent.

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. The limitations imposed are necessary for the Department to monitor Respondent and to inform his employer of the contents of this Order set forth below. Monitoring limitations will allow the Department to assess Respondent's competency to practice private security in Wisconsin. Two years is an appropriate time for the above limitations, after which Respondent may seek to have the limitations removed. The effect of the limitations on Respondent's private security permit will protect the public, rehabilitate Respondent, 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

As a result of Respondent's reprimanded and his permit being limited by the Department, the Department is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. See Wis. Stat. § 440.22(2). In exercising such discretion, the Department must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. The Department has, in previous orders, considered many factors when determining if all or part of the costs should be assessed against Respondent. See *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS0802183 CHI) (Aug. 14, 2008). It is within the Department's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

Particularly relevant in the instant case are the following facts. First, the Division proved every count it alleged. The Division did not waste resources or incur additional costs by alleging multiple counts and then failing to prove those counts. Second, Respondent's conduct which led to discipline resulted from violating a law regarding handling a firearm. Such behavior is troublesome and serious. Respondent did not cooperate with the disciplinary proceedings. As a result of Respondent's conduct, the Division sought a reprimand and limitations on Respondent's permit to practice private security in Wisconsin. The level of discipline is significant; it indicates a need to publicly warn Respondent and limit and monitor his conduct. Third, Respondent made no argument concerning whether costs should be assessed against him. When Respondent fails to argue a position, the Division is not obliged to make the argument for him. Finally, 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 favor of requiring

Respondent to pay the costs of this proceeding which resulted in significant discipline, rather than spreading the costs among all private security persons in Wisconsin.

In view of the foregoing, the full costs of this proceeding shall be assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, it is hereby ORDERED that Respondent Jonathan J. Pinero is hereby REPRIMANDED, effective on the date the final decision is signed by the Department.

IT IS FURTHER ORDERED that Respondent's private security person permit (no. 46652-108) shall be LIMITED as follows:

1. Respondent shall not carry a firearm in conjunction with employment as a private security person.
2. Respondent shall not hold a firearms permit issued by the Department or work as a private security person at any site which requires use or possession of a firearm.
3. Respondent shall provide a copy of this Order to his supervisor(s) at all private detective agencies where he is employed as a private security person, if any.
4. Beginning three months after the date of this Order, Respondent shall arrange for his supervisor(s) at all private detective agencies where he is employed as a private security person, if any, to provide quarterly reports to the Department Monitor at the address below. Respondent's supervisor shall submit 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 this 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 and shall include the following:
 - 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. In addition, Respondent shall 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.
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.

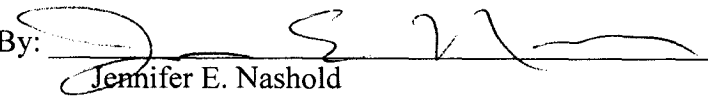
IT IS FURTHER ORDERED in the event Respondent fails to comply with the terms of this Order, as set forth above, Respondent's permit (no. 46652-108), or Respondent's right to renew his permit, may, in the discretion of the Department, or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

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 the Final Decision and Order in this matter shall be sent 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 June 23, 2016.

STATE OF WISCONSIN
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By: 
Jennifer E. Nashold
Administrative Law Judge