

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov

STATE OF WISCONSIN
BEFORE THE SOCIAL WORKER SECTION

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER
WITH VARIANCE

TANYA L. KRAEGE,
RESPONDENT.

DHA Case No. SPS-15-0051
DLSC Case No. 14 SOC 005

0004879

BACKGROUND

On May 6, 2016, Administrative Law Judge Jennifer Nashold (ALJ), Division of Hearings and Appeals, issued a Proposed Decision and Order (PDO) in the above referenced matter. The PDO was mailed to all parties. On May 24, 2016, the Division of Legal Services and Compliance (Division) filed an objection to the PDO regarding the amount of costs to be paid by the Respondent. The Division recommended Respondent be assessed eighty percent (80%) of the costs of this proceeding. Respondent did not file a response to the Division's objection. On July 27, 2016, the Social Worker Section of the Wisconsin Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board (Section) met to consider the merits of the PDO and the stated objection. The Section voted to approve the PDO with variance. The PDO is attached hereto and incorporated in its entirety into this Final Decision and Order with Variance.

VARIANCE

Pursuant to Wis. Stat. §§ 440.035(1m) and 457.26(1), the Section is the regulatory authority and final decision maker governing disciplinary matters of those credentialed by the Section. The matter at hand is characterized as a class 2 proceeding pursuant to Wis. Stat. § 227.01(3)(b). The Section may make modifications to a PDO, in a class 2 proceeding, pursuant to Wis. Stat. § 227.46(2), provided the Section's decision includes an explanation of the basis for each variance.

In the present case, the Section adopts the PDO in its entirety except for the following variance:

1. In the section titled, "DISCUSSION," under the subsection titled "Discipline," found on page eleven (11) of the PDO, the Section removes the remainder of the PDO and Order in its entirety, and the following is substituted.

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 Advanced Practice Social Worker (APSW) credential be revoked. The primary basis for this request is the Division's assertion that Respondent refused to agree to any AODA monitoring requirements offered during settlement negotiations. Respondent counters that this assertion is misleading because (1) the Division neglects to mention that the Division's settlement offer was contingent upon a suspension of Respondent's credential; and (2) Respondent unequivocally testified at hearing that she would agree to monitoring requirements. Respondent argues that there should be a five-year suspension of Respondent's credential, effective the date of Respondent's arrest, February 1, 2014, and that the suspension be stayed upon Respondent's providing proof that she complied with certain AODA treatment and monitoring requirements for three (3) months. It is unclear from Respondent's brief whether it is intended that the AODA treatment and monitoring also be back-dated to the February 1, 2014 arrest.

For the reasons explained below, the Section does not adopt either of counsel's recommendations. As set forth in more detail in the Order section below, the Section imposes the Division's "standard impairment order," which includes an indefinite suspension of Respondent's APSW credential, which may be stayed upon proof of compliance with treatment and monitoring requirements outlined in the Order. Upon a showing by Respondent of continuous successful compliance for a period of at least five (5) years with the terms of the Order, including 600 hours of active social work practice for every year the suspension is stayed. The Order provides the Section the discretion, upon its own motion, to grant full Wisconsin licensure at any time.

In imposing this discipline, the Section notes the extremely serious nature of Respondent's conduct. Respondent pled guilty to two felony convictions for sixth offense OWI and eluding an officer. The conduct underlying these convictions is egregious and resulted in a great risk of danger to the public. The Respondent, while intoxicated, led police on a chase which involved violating a number of traffic laws, and which only ended because Respondent crashed through a snow bank and became stuck in an open field. Although Respondent's fifth conviction for OWI was approximately ten years earlier in 2005, this relapse was serious and endangered the public safety. It is one thing to suffer a relapse; it is another to endanger the public in such a manner.

This discipline also takes into account the mitigating factors which are relevant to the issue of Respondent's current and future ability to safely and competently practice as a social worker. First, Respondent has not been previously subject to professional discipline. The record shows that prior to her relapse and offenses on February 1, 2014, Respondent was successfully employed as a substance abuse counselor. Prior to February 1, 2014, Respondent had not had an alcohol-related criminal violation for nearly ten years and since her guilty plea Respondent has taken responsibility for her actions. Secondly, no patient was harmed, or involved in Respondent's actions.

Finally, evidence presented at the hearing demonstrates that Respondent is highly committed to, and thus far, successful in her recovery efforts. Respondent's expert testified Respondent has a probable likelihood of remaining sober for the rest of her life and resuming a successful career. Respondent immediately underwent in-patient treatment following her arrest,

went through a ninety (90) day program at Connections Counseling as well as one-on-one counseling with Dr. Mulkerin for approximately eleven (11) months. She also successfully served as a mentor, has attended AA while in prison, plans to go to a twenty (20) week residential program, and return to Connections Counseling upon her release

Nonetheless, sobriety in an environment like prison, where Respondent currently resides, is forced. The question the Section must address is whether and under what circumstances Respondent can resume practice in a manner that demonstrates the qualities and abilities necessary for a social worker to assist in providing treatment for others, especially once reintroduced to an uncontrolled environment after a serious and recent relapse event. With the Respondent's commitment to sobriety and the Section's concerns about the seriousness of Respondent's relapse and subsequent criminal convictions, the Section finds the five (5) year impairment plan is appropriate.

The five (5) year impairment Order provides the Respondent with structured treatment requirements and goal setting, contact with multiple resources for treatment, and the opportunity for Respondent to demonstrate her ability to practice in a safe and competent manner. The Order allows Respondent to earn increased responsibility and to decrease Section oversight upon consistent demonstration of successful compliance. The Order also provides the Section a tool to act swiftly to protect the public should Respondent relapse again, violate the Order, or demonstrate she is unable to practice safely and competently.

Additionally, although the practice of a substance abuse counselor and social worker do overlap, the Section does not find the prior Department substance abuse counselor decisions discussed by Respondent persuasive. Respondent's APSW credential allows her to engage in the practice of social work which entails:

applying psychosocial or counseling principles, methods, or procedures in the assessment, evaluation, or psychosocial diagnosis, prevention, treatment, or resolution of a difficulty in the social, psychological, personal, emotional, or mental functioning of an individual, couple, family, group of individuals, or community, including the enhancement or restoration of, or the creation of societal conditions favorable to the enhancement or restoration of, the capacity of an individual, couple, family, group of individuals, or community for social functioning or the delivery of services to a group of individuals or a community to assist the group or community in providing or improving the provision of social or health services to others.

Wis. Stat. § 457.01(10).

As a social worker, Respondent holds a credential granted by the Section, not the Department. In addition to the increased role and responsibility of a social worker, the requirements for licensure and the standards of practice are also increased for a social worker. *Compare* Wis. Stat. § 457.08(2) and Wis. Admin. Code chs. MPSW 2-7, and 20, *with* Wis. Stat. § 440.88 and Wis. Admin. Code chs. 160-168. These significant differences in responsibility and practice ability further support the imposition of the indefinite suspension and five (5) year impairment order.

Costs

The Section has the authority to assess costs for these disciplinary proceedings pursuant to Wis. Stat. § 440.22(2), which reads, in part:

In any disciplinary proceeding against a holder of a credential in which the department or an examining Board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder.

The Section is not required to go through any particular analysis when determining whether to assess all or part of the costs of this proceeding against the Respondent. Nevertheless, guidance can be found in *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. In *Noesen*, the Court opined:

Under Wis. Stat. § 440.22(2), the Board may, in its discretion, "assess all or part of the costs of the proceeding" against the licensee if the Board takes disciplinary action as a result. We give due weight to the Board's exercise of discretion. Wis. Stat. § 227.57(10). In reviewing the exercise of discretion, we look to determine whether the decision maker examined the relevant facts, applied the proper standard of law, and reached a reasonable conclusion. *Doerschling*, 138 Wis. 2d at 328.

Id. ¶ 30.

In addition to the above mandatory authority, in previous orders, the Section has considered the following non-mandatory factors to aid in determining if all or part of the costs should be assessed against a Respondent:

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 of Safety and Professional Services is a "program revenue" agency; and
7. Any other relevant circumstances.

In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz (LS 0802183 CHI).

In considering these factors, the Section has the discretion to give each factor the weight appropriate given present circumstances. In this case, the Section finds that the imposition of eighty percent (80%) of the costs is warranted.

To begin, the Division has proven the count it charged. Second, Respondent's actions are extremely serious in nature involving two felony convictions and the underlying serious relapse event. Although this Order is not imposing the revocation sought by the Department, an indefinite suspension and five (5) year impairment order is significant and involves rigorous AODA treatment and monitoring. In her favor, Respondent did cooperate and participate in these proceedings, and had no prior disciplinary proceedings involving her APSW credential. Unequivocally operating in the Division's favor, however, is the fact that Respondent expended resources on a motion to dismiss which was not successful.

Finally, the Department of Safety and Professional Services is a program revenue agency, whose operating costs are funded by the revenue received from credential holders. This is a fact that weighs heavily into the calculation of the appropriate amount of costs to be borne by the Respondent. The Section gives serious consideration as to whether the costs associated with this action should be paid by the Respondent or shared by other non-culpable licensees.

Based on the foregoing, the Section finds the Respondent shall pay eighty percent (80%) of the costs of this matter.

CONCLUSIONS OF LAW

1. The Division has met its burden of establishing that the circumstances of Respondent's convictions for sixth offense OWI and fleeing/eluding an officer substantially relate to the circumstances of the profession of Advanced Practice Social Worker and that Respondent therefore engaged in unprofessional conduct pursuant to Wis. Stat. § 457.26(2)(b) and Wis. Admin. Code § MPSW 20.02(2).
2. Under the facts of record and the criteria articulated in *Aldrich*, an indefinite suspension, with the opportunity for a stay upon proof of three (3) months of compliance, with a five (5) year impairment order as set forth below is warranted.
3. Under the facts of this case and consistent with *Noesen*, Respondent is required to pay eighty percent (80%) of the costs of this proceeding.

ORDER

For the reasons set forth above it is hereby ORDERED:

SUSPENSION

- A.1. The certificate of Respondent Tanya L. Kraege to practice as an Advanced Practice Social Worker (APSW) certificate number 129264-121, in the State of Wisconsin is SUSPENDED for an indefinite period.
- A.2. Respondent shall mail or physically deliver all indicia of certification to the Department of Safety and Professional Services Monitor (Department Monitor) within 14 days of the effective date of this Order. Limited credentials can be printed from the Department of Safety and Professional Services website at <http://dsps.wi.gov>

- A.3. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active social work practice for every year the suspension is stayed, the Section may grant a petition by the Respondent under paragraph D.6. for return of full Wisconsin certification. The Section may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time.

STAY OF SUSPENSION

- B.1. The suspension may be stayed upon Respondent providing proof, which is determined by the Section or its designee to be sufficient, that Respondent is in compliance with the provisions of Sections C and D of this Order for the most recent three (3) months.
- B.2. The Section or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. A substantial violation includes, but is not limited to, a positive drug or alcohol screen. A repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Section or its designee may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
- a. Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services pursuant to Wis. Stat. § 440.11; or
 - b. Actual notice to Respondent or Respondent's attorney.
- B.4. The Section or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Section or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within sixty (60) days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, drug and alcohol treatment with a Treater acceptable to the Section or its designee (Treater). Participation shall begin within 30 days of the date of this Order. Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.

- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment as required under the term of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (see D.1. below). If Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater by the Section or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Section or its designee, after receiving a petition for modification as required by D.5., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Section, its designee, and any employee of the Department, Division of Legal Services and Compliance to:
 - a. obtain all specimen screen results and patient health care and treatment records and reports, and
 - b. discuss the progress of Respondent's treatment and rehabilitation with Treater, treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an approved equivalent program for recovering professional, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified by the speaker or chair and reported quarterly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.

- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with State and Federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Section or its designee. Copies of these releases shall immediately be filed with the Department Monitor.
- C.10. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that they may take from time to time. Respondent shall abstain from all use of over-the-counter medications or other substances (including but not limited to natural substances such as poppy seeds or any products containing alcohol) which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's test results, treatment or rehabilitation, unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.11. It is Respondent's responsibility to educate herself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- C.11. Respondent shall report to Treater and the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within twenty-four (24) hours of ingestion or administration, fill or refill of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department Monitor (Approved Program). Participation shall begin no later than 30 days of the date of this Order.
- C.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
- a. Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - b. Production of a urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.

- C.14. The Approved Program shall require the testing of specimens at a frequency of not less than forty-nine (49) urine screens per year, for at least the first year of this Order. Thereafter the Section may adjust the frequency of testing on its own initiative at any time.
- C.15. The Department Monitor, Section or Section designee shall determine the tests to be performed upon the specimens. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Section or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.16. In addition to any requirement of the Approved Program, the Section or its designee may require Respondent to do any or all of the following:
- a. submit additional specimens;
 - b. furnish any specimen in a directly witnessed manner; or
 - c. submit specimens on a more frequent basis.
- C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.
- C.18. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- C.19. Respondent may work as an APSW in a setting in which Respondent has access to controlled substances. If treater subsequently recommends restrictions on such access, the Section or its designee may impose such restrictions.
- C.20. Respondent shall practice only under the direct supervision of a credentialed social worker or other licensed health care professional approved by the Section or its designee.
- C.21. Respondent shall practice only in a work setting pre-approved by the Section or its designee. Requests for preapproval must be accompanied by a current job description, name and contact information of the direct supervisor, and written acknowledgment from the employer that a copy of this Order has been received and that the restrictions will be accommodated
- C.22. Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as an APSW, currently or in the future.
- C.23. It is Respondent's responsibility to arrange for written reports from her employer or practice partner(s) to be provided to the Department Monitor on quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work

performance, and shall include the number of hours of active practice worked during that quarter. If a report indicates poor performance, the Section may institute appropriate corrective limitations, or may revoke a stay of the suspension in its discretion.

- C.24. Respondent shall report to the Department Monitor any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Department of Safety and Professional Services
1400 E. Washington Ave.
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.
- D.3. Respondent shall submit self-reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. The reports shall include a summary of Respondent's compliance with the terms and conditions of the Order in the previous quarter, Respondent's current address and home telephone number. The self-report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

Change of Treater or Approved Program by Section

- D.4. If the Section or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Section or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program

Petitions for Modification of Limitations or Termination of Order

- D.5. Respondent may petition the Section on an annual basis for modification of the terms of this Order, but no petition for modification shall be considered sooner than one (1) year from the date of this Order. Any petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

- D.6. Respondent may petition the Section for full, unrestricted licensure upon demonstration of continuous, successful compliance with the terms of the Order for at least five (5) years, including at least 600 hours of active social work practice each year.

Costs of Compliance

- D.7. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Additional Discipline

- D.8. In the event that Respondent violates any term of this Order, Respondent's license may, in the discretion of the Section or its designee, be SUSPENDED, without further notice or hearing, until Respondent has provided proof, which is determined by the Section or its designee to be sufficient, that Respondent is in compliance with the terms of the Order. The Section may, in addition and/or in the alternative, refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

Dated at Madison, Wisconsin this 17 day of August, 2016

WISCONSIN SOCIAL WORKER SECTION

By:


A Member of the Section



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Tanya L. Kraege, Respondent

DHA Case No. SPS-15-0051
DLSC Case No. 14 SOC 005

PROPOSED DECISION AND ORDER

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

Tanya L. Kraege by

Attorney Mario D. Mendoza
Murphy & Desmond, S.C.
33 E. Main Street, Suite 500
P.O. Box 2038
Madison, WI 53701-2038

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

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

Attorney James E. Polewski
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 on June 2, 2015, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), served its Complaint on Respondent Tanya L. Kraege (Respondent). The Complaint alleged that Respondent was subject to discipline and engaged in unprofessional conduct pursuant to Wis. Stat. § 457.26(2)(b) and Wis. Admin. Code § MPSW 20.02(2) by violating laws substantially

related to the practice of advanced practice social work. A companion case concerning Respondent's substance abuse counselor and substance abuse counselor in training certificates is also pending in Case No. SPS-15-0052. Following Respondent's filing of her Answer, a telephone prehearing conference was held on July 2, 2015, at which a hearing date and related deadlines were established.

A hearing was held on both cases on September 2, 2015, in Madison, Wisconsin. Exhibits were received from both parties, and counsel for Respondent presented Respondent's testimony as well as the testimony of two experts, Lara Skye Tikkanen and Dr. Vickie Mulkerin. The Division did not present any witnesses.

At the close of the Division's case, Respondent moved for dismissal, which was denied. Following the close of Respondent's case, Respondent again moved for dismissal. After discussion with the parties with respect to procedure and burden of proof issues, briefing on the motion to dismiss was ordered. Following submission of the final brief on the motion, the ALJ issued an order denying the motion to dismiss on October 30, 2015, which also set a briefing schedule on the merits. The parties submitted briefs, with the last submission received on February 10, 2016.

Due to a misunderstanding of the scope of the ALJ's order denying the motion to dismiss, a telephone conference was held on February 16, 2016, at which the ALJ provided the parties an opportunity to provide supplemental briefs on the issue of whether the circumstances of Respondent's convictions substantially relate to the circumstances of the profession of advanced practice social worker. After receiving a response from Respondent's counsel that he wished to submit a supplemental brief as permitted, a briefing order was issued February 22, 2016. Respondent filed a supplemental brief on March 7, 2016, and the Division filed its response on April 6, 2016.

FINDINGS OF FACT

1. Respondent is certified as an advanced practice social worker in the State of Wisconsin, having certificate number 129264-121, first granted on September 24, 2014 and current through February 28, 2017. (Complaint; ¶1; Answer, ¶1)

2. Respondent is certified as a substance abuse counselor in the State of Wisconsin, having certificate number 15706-132, first granted on August 14, 2012, and current through February 28, 2017. Respondent was also certified as a substance abuse counselor in training, having certificate number 15673-130, first granted on May 5, 2009. This certification expired on February 28, 2013, and has not been renewed. Respondent retains the right to renew this certificate until February 27, 2018. (Complaint in Case No. SPS-15-0052, ¶¶1 and 2; Answer in Case No. SPS-15-0052, ¶¶1 and 2; Tr., p. 27¹)

¹To the extent that the Division's Complaint and the Respondent's Answer in the companion case involving Respondent's substance abuse counselor credentials, Case No. SPS-15-0052, are not technically part of the record in this case, I take official notice of this particular information contained in these documents.

3. Respondent was employed as a substance abuse counselor at Madison Health Services in Madison, Wisconsin, from August 5, 2011 to February 1, 2014. (Div. Ex. 2, p. 1; Sept. 2, 2015 Hearing Transcript (Tr.), pp. 27-29)

4. On February 1, 2014, a police officer in a marked car, with lights flashing, attempted to stop the vehicle Respondent was driving. (Complaint, ¶5; Answer, ¶5)

5. Respondent led the police officer on a chase, violating a number of traffic laws, including failing to stop at stop signs. (Complaint, ¶6; Answer, ¶6)

6. The chase ended when Respondent crashed through a snow bank and became stuck in an open field. (Complaint, ¶7; Answer, ¶7)

7. Although police officers ordered Respondent to put her vehicle in park, speaking to her through the open passenger side window, Respondent pressed the accelerator pedal instead, causing her wheels to spin in the snow and mud. (Complaint, ¶8; Answer, ¶¶7-8)

8. Respondent was arrested for sixth offense operating a motor vehicle while under the influence of an intoxicant or other drug (OWI), resisting an officer, and fleeing or eluding an officer. (Complaint, ¶9; Answer, ¶9)

9. On February 3, 2015, Respondent was formally charged with four criminal offenses for her conduct. She was charged with three felonies: operating a motor vehicle while intoxicated (OWI) as a sixth offense, operating with a prohibited alcohol concentration as a sixth offense, and fleeing or eluding an officer. She was also charged with one misdemeanor: obstructing an officer. Pursuant to a plea agreement, on February 25, 2015, Respondent was convicted of felony sixth offense OWI and of felony fleeing or eluding an officer. (Div. Ex. 1; Tr., p. 8)

10. For the sixth offense OWI, Respondent was sentenced to two years in prison to be followed by three years of extended supervision. She was also ordered to pay a fine of \$1,800, and undergo alcohol or other drug abuse (AODA) treatment. Additionally, her driver's license was revoked for three years and she was ordered to have an ignition interlock device on her car. Respondent was also sentenced to a period of one year and six months in prison for eluding the police, to be served concurrently with the two-year sentence for sixth offense OWI. (Div. Ex. 1)

11. No patient was present or involved in the events that led to Respondent's arrest and conviction. (Tr., pp. 29-30)

12. Prior to her OWI conviction in 2015, Respondent's last conviction for OWI was approximately ten years earlier, in 2005. (Tr., p. 30)

13. Following her February 1, 2014 arrest, Respondent underwent in-patient treatment and stopped working at Madison Health Services. Respondent was terminated from her employment at Madison Health Services following her convictions. (Tr., p. 29)

14. Since her arrest on February 1, 2014, Respondent sought treatment for her alcohol abuse. She first went to an in-patient treatment center from February 5, 2014 through March 12, 2014. After completing in-patient treatment, she went to Connections Counseling for out-patient treatment groups twice per week and to one-on-one therapy. She was a patient at Connections Counseling for 90 days. Her one-on-one therapy at Connections Counseling was provided by Dr. Vickie Mulkerin, and lasted approximately 11 months. During this time she also attended outside support groups -- AA, NA or Alanon -- at a minimum of three times per week. (Tr., pp. 31-32, 59)

15. After successfully completing her 90-day outpatient treatment at Connections Counseling, Respondent was nominated by her AODA counselor and selected to serve as a mentor to other individuals in recovery at Connections Counseling. In her role as mentor, she was asked to design activities for people new to recovery and to be there for them if they needed help or support. She provided rides to sobriety events and reached out to people who were struggling. She served as a mentor for approximately one year until her sentencing. She performed very well in her role as a mentor, becoming a vital part of the therapy group. (Tr., pp. 31-32, 50-51)

16. Prior to her conviction in 2015, Respondent had not been charged with any law violation related to alcohol consumption for approximately ten years. Her actions on February 1, 2014 resulted from a relapse. Respondent's OWI convictions over ten years ago occurred prior to earning her professional credentials. (Tr., pp. 51, 57)

17. Respondent has not consumed alcohol since February of 2014. (Tr., pp. 33, 41)

18. Prior to the February 1, 2014 arrest, Respondent had practiced substance abuse counseling with three different employers, including Madison Health Services. She had been evaluated by her employers, was given raises appropriately and had never been told that her work was unsatisfactory. (Tr., pp. 5, 27-28)

19. In her Answer to the Division's Complaint, Respondent admitted that her "social work practice focuses on treatment of substance abuse issues." At hearing, she testified that she had not practiced social work since obtaining her degree. (Complaint, ¶9; Answer, ¶9; Tr., p. 27)²

20. At the time of the hearing in this matter, Respondent was incarcerated at Taycheedah Correctional Institution for her OWI and eluding convictions. While incarcerated, she attended AA or NA meetings. She also planned to go to a 20-week residential program and, upon her release, to return to Connections Counseling for treatment. She has learned that she needs to go to meetings and undergo counseling the rest of her life and that they need to take priority. She testified that she would "absolutely" agree to conditions imposed on her credentials to assure that she remains sober. (Tr., pp. 32-34)

² Based on Respondent's Answer to the Complaint, the Division asserts that Respondent practiced as a substance abuse counselor at Madison Health Services under her social work degree. Respondent disputes this assertion. As shown below, this dispute need not be resolved to decide this case.

21. When asked why she wanted to keep her clinical substance abuse credentials, Respondent testified that she felt she was good at what she did, that she has “a tremendous amount of passion to help other people get out of the terrors of active addiction,” that it is very rewarding, and that she “get[s] to see miracles all the time.” (Tr., p. 33)

22. Respondent’s expert witness, Lara Skye Tikkanen, is a clinical substance abuse counselor, a licensed professional counselor, a clinical supervisor in training and a nationally certified counselor. Tikkanen has been employed at Connections Counseling since 2005 and is the assistant director, with hiring and supervisory responsibilities. (Resp. Ex. 100; Tr., pp. 43-44, 49) Tikkanen opined as follows:

(a) Many substance abuse counselors are in recovery from alcohol or substance abuse. Tikkanen herself had a history of alcohol abuse, and the owner of Connections Counseling has also been in recovery for 20 years. The Director of the Office of National Drug Control Policy is also in recovery. (Tr., pp. 43-46)

(b) Relapse is possible for anyone who has an alcohol or drug addiction. Relapses by substance abuse counselors who are in recovery occur, but those professionals should not be excluded from practicing. Because it is desirable to keep the voice of the recovering professional in the field, it must be accepted that relapses are possible, and to provide monitoring programs. With proper monitoring, a substance abuse counselor in recovery can safely practice. (Tr., pp. 46-47)

(c) A person with a conviction for sixth offense OWI and resisting/eluding an officer may still be suitable as a substance abuse counselor, provided the candidate has a length of sobriety, the ability to build rapport with clients and use all of the required counseling skills. Two to three years of sobriety is optimal, depending on the quality of the recovery. If an individual is thriving in the recovery community, is reaching out to people and being a role model for how to get back on track after a relapse, then the person would be the type of individual Tikkanen would look for as a substance abuse counselor, whereas those who are just “gritting their teeth” and trying to make it through the day would not. (Tr., pp. 47-48)

(d) Having a history of alcohol abuse is not potentially detrimental to the counselor-patient relationship. One of the most important factors in enhancing therapy is the strength of the therapeutic alliance, which is built on rapport and trust. Tikkanen’s experience is that while both people in recovery and people not in recovery can make wonderful counselors, the fact that Tikkanen has been in recovery and has been open with her story has helped her build rapport with clients more quickly and gain their trust faster. (Tr., p. 49)

(e) Respondent performed well as a mentor to other individuals in recovery for approximately one year at Connections Counseling and demonstrated traits consistent with a high level of skill as a substance abuse counselor. She was a vital part of the group, built rapport with clients, and got them to meetings. She

also got those who were new to recovery, who were still in withdrawal and feeling horrible, excited about the prospect of recovery. Respondent was solid enough in her own recovery that giving back was not a burden on her. (Tr., p. 50-51)

23. Respondent's other expert witness, Dr. Vickie Mulkerin, was Respondent's one-on-one AODA counselor for 11 months at Connections Counseling. She is also a physician, a licensed professional counselor in training and a substance abuse counselor in training. (Resp. Ex. 101; Tr., p. 59). Dr. Mulkerin opined as follows:

(a) Respondent was diagnosed with alcohol abuse. (Tr. p. 55)

(b) Respondent responded very well to treatment: she wanted to get better, demonstrated excellent insight and was committed to her recovery. Dr. Mulkerin was not sure she had ever worked with a client who was as committed to her recovery as Respondent. (Tr., pp. 58-59)

(c) With regard to Respondent's future outlook, Dr. Mulkerin indicated that Respondent "has an excellent prognosis for remaining sober for the rest of her life." (Tr., p. 59)

(d) With certain monitoring conditions (including therapy), Respondent has a very high likelihood of resuming a productive professional life. (Tr., pp. 59-60)

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).

Alleged Violation

Pursuant to Wis. Stat. § 457.26(2), the Social Worker Section of the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board (Section) may, subject to Wis. Stat. §§ 111.321, 111.322, and 111.335, reprimand the holder of an advanced social work credential or limit, suspend, or revoke the credential if it finds that the social worker has been "convicted of an offense the circumstances of which substantially relate to the practice of advanced practice social work." A credential holder's engaging in such conduct is also defined as unprofessional conduct under Wis. Admin. Code § MPSW 20.02(2).

The Division alleges that Respondent is subject to discipline under Wis. Stat. § 457.26(2) and engaged in unprofessional conduct pursuant to Wis. Admin. Code § MPSW 20.02(2) by violating laws substantially related to the practice as an advanced practice social worker.

Wisconsin's Fair Employment Act prohibits discrimination in employment based on a conviction record. See Wis. Stat. §§ 111.321 and 111.322. However, Wis. Stat. § 111.335(1)(c)1. provides that it is not employment discrimination because of conviction record to refuse to license, or to bar or terminate from licensing, any individual who has been convicted of any felony, misdemeanor or other offense "the circumstances of which substantially relate to the circumstances of the particular job or licensed activity." The question in this case is whether the circumstances of Respondent's convictions for sixth offense OWI or eluding/fleeing an officer substantially relate to the circumstances of her practice as an advanced practice social worker.

The substantial relationship test was explained in *County of Milwaukee v. Labor & Industry Review Commission*, 139 Wis. 2d 805, 407 N.W.2d 908 (1987). In that case, the Wisconsin Supreme Court held that the circumstances of Stephan Serbin's convictions for 12 counts of neglect of nursing home residents and one count of felony homicide by reckless conduct related to the death of a patient who had wandered from the nursing home and died from exposure to the cold were substantially related to his job of crisis intervention specialist. *Id.* at 828-829. In explaining the substantial relationship test, the court discussed the competing interests the legislature addressed in enacting the Fair Employment Act and explained what is meant by the substantial relationship requirement:

It is evident that the legislature sought to balance at least two interests. On the one hand, society has an interest in rehabilitating one who has been convicted of crime and protecting him or her from being discriminated against in the area of employment. Employment is an integral part of the rehabilitation process. On the other hand, society has an interest in protecting its citizens. There is a concern that individuals, and the community at large, not bear an unreasonable risk that a convicted person, being placed in an employment situation offering temptations or opportunities for criminal activity similar to those present in the crimes for which he had been previously convicted, will commit another similar crime.

Id. at 821. The court further stated, "[T]he legislature has clearly chosen to not force such attempts at rehabilitation in employment settings where experience has demonstrat[ed] the likelihood of repetitive criminal behavior." *Id.* at 823.

The purpose of the test is to assess "whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear in a related context, based on the traits revealed." *Id.* at 823-824. In analyzing what circumstances are relevant, "[i]t is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person." *Id.* at 824.

Respondent appears to interpret *County of Milwaukee* to mean that for the substantial relationship test to be satisfied, there must be a showing that the circumstances of the job foster

criminal activity similar to that involved in the convictions. Under such a standard, the Division would not have met its burden of satisfying the substantial relationship test. As Respondent notes, at the time of her criminal conduct, Respondent was not at work, was not traveling to or from work, was not in the presence of patients or co-workers, and her profession of advanced practice social worker or substance abuse counselor were not in any way implicated in the events leading up to her arrest. In addition, there is no indication in the record that any type of driving is involved in the profession of advanced practice social worker, that alcohol would be present in the job setting, or that Respondent would be persuaded by her interactions with clients to drink to excess and drive. The Division presented no evidence or compelling argument demonstrating that the circumstances of employment as a social worker would “foster criminal activity” or offer “temptations or opportunities for criminal behavior” similar to those present in the commission of OWI or eluding law enforcement. *Id.* at 821, 824. In fact, it may be equally or more reasonable to conclude that if Respondent’s social work practice involves counseling others for alcohol or drug abuse, then her practice in this area would decrease the tendency to engage in such conduct, as it would offer a daily reminder of the wreckage alcohol and drug abuse can inflict on people’s lives and presumably offer access to other professionals who provide tools for achieving drug and alcohol-free lifestyles.

However, I cannot conclude that the substantial relationship test requires that the circumstances of the job foster criminal activity, much less that it foster the same type of criminal activity as that upon which the convictions were based. I reach this conclusion because both *County of Milwaukee* itself and other cases interpreting the substantial relationship test indicate that the test may be satisfied by showing that the traits or characteristics as exhibited in the commission of the crime contradict those required to effectively practice the profession. As stated in *County of Milwaukee*, the purpose of the test is “to assess whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear in a related context, based on the traits revealed.” *Id.* at 823-824. The court also emphasized “the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person.” *Id.* at 824.

Moreover, in *Gibson v. Transp. Comm.*, 106 Wis. 2d 22, 315 N.W.2d 346 (1983), the Wisconsin Supreme Court concluded that the circumstances of an armed robbery conviction were substantially related to the circumstances of the license for school bus driver. *Id.* at 29. The *Gibson* court did not base its decision on the rationale that the circumstances of school bus driver would foster criminal activity. Rather, the court reasoned:

A conviction of armed robbery under Indiana law requires that the person be found to have participated in the taking of another’s property by threatening to harm them with a dangerous weapon. It thus indicates a disregard for the personal and property rights of other persons. It also indicates a propensity to use force to accomplish one’s purposes. *The armed robbery conviction indicates personal qualities which are contradictory to the extreme patience, levelheadedness and avoidance of the use of force which [a witness] testified are essential in a school bus driver.*

Id. at 28 (emphasis added). As pointed out by the Division, there was no suggestion that Mr. Gibson was likely to commit armed robbery with a school bus full of children or against a school bus full of children. Rather, it was sufficient that the violent and threatening elements of the crime of armed robbery were substantially related to the qualities reasonably desired in a school bus driver. Although *Gibson* was decided prior to *County of Milwaukee*, the *County of Milwaukee* court did not overrule *Gibson*.

The same is true of the Wisconsin Supreme Court's decision in *Law Enforce. Stds. Bd. v. Lyndon Station*. 101 Wis. 2d 472, 305 N.W.2d 89 (1981). In that case, the court held the circumstances of convictions for falsifying uniform traffic citations substantially relate to the duties of police chief for the village. *Id.* at 492. The court noted that as a police officer in the village, Mr. Jessen would be charged with enforcing traffic laws and that "common sense dictates that a conviction of the felony of misconduct in public office for falsifying traffic tickets certainly bears a substantial relationship to the duties of a police officer who is called upon to issue traffic citations." *Id.* 492. However, the court's emphasis was on the relationship of the convictions to the attributes required for the position:

Public trust in the integrity of our law enforcement officials is essential to the preservation of the public peace and for the enforcement of laws and ordinances. This trust and confidence is shaken by casting even the slightest suspicion against the professional character and integrity of a police chief. If the state authorities through our court system have convicted someone of felonies, it stands to reason that his effectiveness as a law enforcement officer will be greatly diminished. What impression would be given to an impartial jury when the police chief, as the prosecution's primary witness in a serious criminal case, has to explain on cross-examination that he stands convicted of 26 felonies? We agree with the LESB that employment of a nonpardoned felon in a law enforcement capacity would only serve to undermine the public's trust in its police officers as well as the ability of such persons to adequately perform the duties of officers of the law.

Id. at 492-93. The court reiterated: "[A]llowing one who stands convicted of the felony of misconduct in public office for falsifying traffic citations to serve in a law enforcement capacity seriously undermines the public's trust in its police officers as well as *such person's ability to adequately perform the duties and responsibilities of law enforcement officers.*" *Id.* at 494-95 (emphasis added). The *Lyndon Station* decision was not overruled by *County of Milwaukee*. Rather, as with *Gibson*, the decision was cited favorably by the *County of Milwaukee* court.

In view of the foregoing, it cannot be concluded that in order for Respondent's convictions to be substantially related to the position of advanced practice social worker, the position must provide Respondent with the opportunity or temptation to engage in criminal activity generally, or drunk driving/eluding specifically.

I also conclude that Respondent's post-arrest and post-conviction conduct, although commendable and impressive, is not relevant to the substantial relationship test. The statutory and administrative provisions are clear that it is the circumstances of the conviction and the circumstances of the position that are to be considered, not post-arrest or post-conviction events.

This conclusion is supported by *Lyndon Station*, in which the court concluded a substantial relationship existed, despite the fact that the police chief had satisfactorily performed in the position for several years following his convictions. *See also County of Milwaukee*, 139 Wis. 2d at 827 (“Whether an individual can perform a job up to the employer’s standards is not the relevant question.”). Thus, the question is whether the circumstances of Respondent’s sixth offense OWI and eluding convictions are substantially related to the practice of advanced practice social work, and in looking at that issue, the perspective must be from the time period in which Respondent engaged in the offenses, not from some point in time following that conduct.

The Division relies, in part,³ on the statutory definition of “social work,” which means, in relevant part: “[A]pplying psychosocial or counseling principles, methods, or procedures in the assessment, evaluation, or psychosocial diagnosis, prevention, treatment, or resolution of a difficulty in the social, psychological, personal, emotional, or mental functioning of an individual . . ., including the enhancement or restoration of . . . the capacity of an individual . . . for social functioning. . . .” Wis. Stat. § 457.01(9). The Division also states that Respondent was practicing as a substance abuse counselor at Madison Health Services under social work credential. Respondent disputes this, relying on her testimony that she has not practiced under her advanced practice social work credential since obtaining it. However, in her Answer to the Division’s Complaint, Respondent admitted that her “social work practice focuses on treatment of substance abuse issues.” Thus, to the extent that Respondent provided substance abuse counseling under her social work credential, or may do so in the future, I also examine the provisions governing substance abuse counseling and the expert testimony related to substance abuse counseling.

A substance abuse counselor uses eight practice dimensions to effectively treat substance use disorders, including counseling and patient education. Wis. Admin. Code § SPS 160.02(20). “Prevention” regarding substance abuse is defined in part as the pro-active process of promoting an environment conducive to the health and safety of individuals. Wis. Admin. Code SPS §160.02(21). Prevention may be accomplished through promoting, among other things, knowledge, attitudes, skills, values and relationships conducive to health and well-being, and by promoting personal competence, responsibility, judgment, conflict resolution and healthy lifestyles. Wis. Admin. Code § SPS 160.02(21)(a), (b), (c) and (g).

The circumstances of Respondent’s convictions, driving while intoxicated for the sixth time and eluding those who sought to protect the public from such dangerous conduct, demonstrate that at the time of the offenses, Respondent lacked many of the qualities and abilities a social worker is supposed to assist in providing for others, such as prevention and treatment, resolution of difficulties in social, psychological, personal and emotional functioning, and enhancing or restoring the ability to function in society. Wis. Stat. § 457.01(9). She also lacked those attributes a substance abuse counselor is supposed to instill in others, such as good judgment, responsibility, and healthy attitudes, skills and values. Driving drunk for the sixth

³ The Division also relies on excerpts from a document purporting to be the Division’s Exhibit 2. The exhibit referred to is not part of the record in this case. At the outset of the hearing, the parties stipulated that the Division’s Exhibit 2 would be admitted in the companion case involving Respondent’s substance abuse counselor credential (Case No. SPS-15-0052); however, the stipulation was specifically limited to the companion case, the Division never moved to have it received in the instant case and it was therefore not admitted in this matter.

time and fleeing an officer shows an anti-social disregard for the safety of others and a lack of self-control. Fleeing an officer also shows an unwillingness to accept the consequences of one's behavior. Respondent's inability to control her own substance abuse and her irresponsible endangerment of others through drunk driving and eluding law enforcement undermines confidence that she is able to effectively practice social work generally or substance abuse counseling, in particular.

Respondent's expert witness, Tikkanen, offered very convincing and compelling testimony that those in recovery are not only substantially present in the profession of substance abuse counseling, but are also valued assets in that field. She also persuasively testified that relapse is possible for anyone in recovery and that relapse is a risk that should be taken in order to preserve the voice of those in recovery in the profession. However, the question here is not whether those who have had substance abuse issues should be indefinitely barred from the practice of social work, or substance abuse counseling. Rather, the focus is on the fact that Respondent both relapsed and that she drove her car while drunk for the sixth time and then eluded officers. Even Tikkanen indicated that a person with a sixth offense OWI and eluding conviction is suitable for the position of substance abuse counselor *only if* there is a substantial period of sobriety and the individual is thriving in recovery. While Respondent may have been at an adequate recovery point by the time of hearing almost two years following her February 1, 2014 arrest, the only evidence relevant to the substantial relationship test is where she stood at the time of her offenses, prior to in-patient and other extensive treatment.

Based on the record before this tribunal, it is more likely than not that Respondent's traits, tendencies, inclinations, and reaction to responsibility at the time of her offenses were in conflict with the traits and qualifications necessary for the position of social worker. *County of Milwaukee*, 139 Wis. 2d at 823-824. Thus, the Division met its burden of establishing that the circumstances of Respondent's convictions for sixth offense OWI and eluding law enforcement are substantially related to the circumstances of the practice of social work and that therefore Respondent engaged in 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). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 484, 164 N.W.2d 235 (1969).

The Division requests that Respondent's advanced practice social worker credential be revoked. The primary basis for this request is the Division's assertion that Respondent refused to agree to any AODA monitoring requirements offered during settlement negotiations. Respondent counters that this assertion is misleading because (1) the Division neglects to mention that the

Division's settlement offer was contingent upon a suspension of Respondent's credential;⁴ and (2) Respondent unequivocally testified at hearing that she would agree to monitoring requirements. Respondent argues that there should be a five-year suspension of Respondent's credential, effective the date of Respondent's arrest, February 1, 2014, and that the suspension be stayed upon Respondent's providing proof that she complied with certain AODA treatment and monitoring requirements for three months. It is unclear from Respondent's brief whether it is intended that the AODA treatment and monitoring also be back-dated to the February 1, 2014 arrest.

For the reasons explained below, I do not adopt either of counsels' recommendations in full. As set forth in more detail in the Order section below, I impose the Division's "standard impairment order," with certain modifications. Most significantly, instead of the standard indefinite suspension of credentials, a three-year suspension is imposed. The suspension may be stayed upon Respondent providing proof of certain AODA treatment and monitoring requirements for a period of three months. If Respondent demonstrates compliance with these requirements for a two-year period, she may petition the Section to have her credentials fully restored. If Respondent does not comply with the AODA monitoring conditions, the Section would have full authority to lift the stay and suspend Respondent's credentials.

In imposing this discipline, I first note the seriousness of Respondent's conduct. Sixth offense OWI and eluding an officer are inexcusable, even if resulting from a relapse after a substantial period of sobriety. It is one thing to suffer a relapse; it is another to endanger the public in such a manner. However, this proceeding is not a criminal proceeding, but a proceeding involving Respondent's professional credentials and the impact her offenses have on her ability to safely and competently practice. Respondent has been appropriately punished for her conduct through the criminal justice system, as reflected by the fact that she testified from prison in these proceedings. As stated in *McIntyre*, "It is not the purpose of this proceeding to impose a second penalty for the offense involved." 41 Wis. 2d at 484. Rather, the purposes of discipline in this matter are reflected in the *Aldrich* case: rehabilitation, protection of the public and deterrence.

I also note that Respondent's conduct, while extremely serious, is mitigated in various respects, all of which are relevant to the issue of her current and future ability to safely and competently practice as a social worker. First, Respondent has not been previously subject to professional discipline. In fact, the record shows that prior to her relapse and offenses on February 1, 2014, Respondent was successfully employed as a substance abuse counselor.

⁴ At the hearing, counsel for both parties attempted to discuss settlement negotiations. The ALJ sustained an objection to further questioning or statements regarding negotiations. Nevertheless, in his reply brief, counsel for the Division attached the Division's settlement offer and an email response from Respondent's attorney which actually appear to indicate that Respondent was willing to accept AODA monitoring. Respondent filed an objection to consideration of this information. However, I am considering the information insofar as it undermines the Division's repeated statements that Respondent rejected all monitoring, shows that the Division was seeking suspension of Respondent's credential in addition to monitoring, and demonstrates that the Division has moved from considering a period of suspension and monitoring appropriate discipline to now maintaining that revocation is the only appropriate discipline.

Prior to the February 1, 2014, Respondent had not had an alcohol-related criminal violation for nearly ten years. Second, no patient was harmed, or involved in, Respondent's actions.

Third, the undisputed evidence showed that Respondent is highly committed to, and successful in, her recovery efforts and has a high likelihood of remaining sober for the rest of her life and resuming a successful career. Respondent immediately underwent in-patient treatment following her arrest, went through a 90-day program at Connections Counseling as well as one-on-one counseling with Dr. Mulkerin for approximately eleven months, and other recovery programs. She very successfully served as mentor for approximately a year to those in recovery. At the time of hearing, she was attending AA while in prison. She also planned to go to a 20-week residential program and, upon her release, to return to Connections Counseling. Respondent has not consumed alcohol since the offenses in February of 2014. I note, however, that Respondent has been in the controlled environment of incarceration for part of this time period and that it is necessary to assure that she continues to remain sober while no longer incarcerated.

Fourth, as evidenced by her guilty plea, her resulting prison sentence and other criminal penalties, her demonstrated and extensive commitment to recovery, and her full cooperation in these disciplinary proceedings, Respondent has taken responsibility for her actions and has paid a high price for her conduct.

I am also persuaded by prior Department decisions discussed by Respondent involving substance abuse counselors, in which far less severe discipline than that recommended by the Division was imposed for similar or more egregious conduct, including conduct which, unlike the instant case, involved direct harm to patients and being intoxicated while on the job. In *In the Matter of the Disciplinary Proceedings Against James M. Williams*, Order No. 0001294 (Jan. 3, 2012), a substance abuse counselor convicted of second offense OWI was given only a reprimand and ordered to pay \$200 in costs, with no AODA monitoring requirements whatsoever. Further, *In the Matter of disciplinary Proceedings Against Clarence Johnson*, Order No. 0000869 (May 25, 2011), involved a substance abuse counselor and independent clinical supervisor, Clarence Johnson, who met a patient at a facility where Johnson was employed. The patient was in in-patient treatment for substance abuse at the facility. Following the patient's discharge, Johnson began a social relationship with the former patient, including meeting with him socially and borrowing money from him. One evening, Johnson asked to meet with the former patient at the patient's place of employment.⁵ Johnson arrived at the place of employment after having consumed an over-the-counter cough medication and alcohol. He requested alcohol from the former patient, and after drinking a "medium" glass of vodka, pushed the patient to the floor and restrained him there until Johnson's wife appeared, whereupon the patient was able to call police. Johnson indicated that he had undergone an alcohol-induced psychosis that evening and could not remember anything after drinking the vodka. The Department imposed a version of its standard impairment order with indefinite suspension of the counselor's credentials, which could be stayed upon a showing of compliance with standard drug and alcohol monitoring requirements for three consecutive months.

⁵ The patient described as gay and the counselor describe himself as a fundamentalist Christian.

Similarly, in *In the Matter of Disciplinary Proceedings Against Sarah S. Hibbard*, Order No. LS0912162RSA (Jan. 3, 2012), the Department imposed a suspension of a substance abuse counselor's credential, subject to a stay upon compliance with the terms of a monitoring order. The counselor in that case had a history of abusing alcohol and cocaine. After a period of sobriety, she was treated for two medical conditions, for which she was prescribed Hydrocodone (a Schedule II narcotic) in one instance, and Soma (a muscle relaxant for which a prescription is required) in another. She abused both medications, which impacted her work as a substance abuse counselor. She became unable to focus on conversations or directives, would nod off at client sessions and was absent without notification. As a result, she was suspended from her employment as a substance abuse counselor on two occasions. Both times, she underwent treatment and was ultimately cleared to return to work. However, on both occasions the counselor commenced abusing medications and again became unable to perform her work. She ultimately resigned in lieu of being terminated, the result of another relapse involving the abuse of codeine and an OWI charge. The Department suspended her credential indefinitely but provided for a stay of her suspension upon three months of compliance with an alcohol and drug monitoring order.

Unlike the conduct in both *Johnson* and *Hibbard*, Respondent's conduct did not involve patients or former patients. In *Johnson*, the counselor developed an inappropriate relationship with a former patient that ended with him physically assaulting the former patient during what Johnson described as an alcohol-induced psychosis. Additionally, despite knowing the former patient had substance abuse issues, Johnson asked the former patient to provide him alcohol and was inebriated in the patient's presence. In *Hibbard*, the counselor came to work repeatedly under the influence of the drugs she was abusing, became unable to perform her counseling work and was twice suspended from her employment. By contrast, Respondent's conduct occurred outside of work and did not involve any of her patients or her place of employment. In addition, unlike Respondent, there was no evidence in *Johnson* or *Hibbard* that at the time of the disciplinary orders, the substance abuse counselors had been refraining from alcohol and other drugs for several years or that they had undergone considerable AODA treatment and helped others in recovery.

The Division's request for revocation is completely unwarranted given the Department's past practice as reflected in the cases above, the objectives of *Aldrich*, the mitigating factors involved here, and the undisputed evidence demonstrating Respondent's sincere and successful efforts to rehabilitate both herself and others suffering from alcohol and drug abuse. A suspension and monitoring order is appropriate in this less aggravated case, just as it was in the more aggravated *Johnson* and *Hibbard* cases. However, because this case is less egregious than the two other cases and in light of Respondent's abstinence and substantial rehabilitation since her 2014 relapse and criminal offenses, Respondent's certification is not suspended indefinitely but is suspended for a period of three years, with the ability to immediately petition for a stay of the suspension upon a showing of compliance with the AODA treatment and monitoring set forth below. The discipline imposed will ensure that Respondent's rehabilitation efforts continue, that she practice only when able to do so effectively, and that others are deterred from engaging in such conduct.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. With respect to imposition of costs, factors which may be considered 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 agency, funded by other licensees. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz, D.C.*, Order No. LS0802183CHI (Aug. 14, 2008). It is not mandatory that all or any of these factors be considered, and it is within the Section's discretion to determine what weight, if any, to give any factors considered.

The Division requests full costs, stating that it proved the count charged, that Respondent's conduct is serious, that other social workers should not bear the costs of Respondent's misconduct, and that Respondent was not willing to accept any of the conditions the Division proposed for her to continue to practice after her convictions.

Respondent requests that the costs be limited to those incurred by the Division prior to preparing and filing the complaint in this matter. Respondent states that the Division's statements regarding Respondent's willingness to accept conditions are misleading, considering Respondent's testimony to the contrary and that the Division's offer involved suspension of Respondent's credential. Respondent asserts that the Division should have in fact proposed monitoring terms that allowed Respondent to continue to practice, as in *Johnson and Hibbard*, rather than insisting that her credential be suspended.

I conclude that Respondent should pay 40 percent of the costs of this proceeding based on the following factors. First, the Division has proven the count that it charged. Second, Respondent's underlying conduct of sixth offense OWI and eluding an officer is serious, but the impact of such conduct on her profession or patients is less serious. In addition, Respondent's conduct was precipitated by a relapse during what appears to be a lengthy period of sobriety and Respondent has undertaken major efforts to rehabilitate herself.

Third, although the Division seeks the highest form of discipline here, revocation, the Division's recommendation is not warranted and appears to be largely based on an unsupported assertion that Respondent refuses AODA monitoring, and is far more severe than that offered before Respondent exercised her right to hearing. The level of discipline imposed is relatively serious, a three-year suspension of her credential, with the opportunity for a stay, and rigorous AODA treatment and monitoring. Moreover, Respondent has fully cooperated in these proceedings and had no prior disciplinary proceeding related to her profession. Unequivocally operating in the Division's favor, however, is the fact that Respondent expended resources on a motion to dismiss which was not successful and that those costs not absorbed by Respondent would have to be absorbed by other members of her profession who, unlike Respondent, have not engaged in unprofessional conduct.

Based on the foregoing, imposition of 40 percent of the costs of this proceeding on Respondent is appropriate.

CONCLUSIONS OF LAW

1. The Division has met its burden of establishing that the circumstances of Respondent's convictions for sixth offense OWI and fleeing/eluding an officer substantially relate to the circumstances of the profession of advanced practice social worker and that Respondent therefore engaged in unprofessional conduct pursuant to Wis. Stat. § 457.26(2)(b) and Wis. Admin. Code § MPSW 20.02(2).

2. Under the facts of record and the criteria articulated in *Aldrich*, a three-year suspension with the ability for a stay and the AODA treatment and monitoring requirements set forth below are warranted.

3. Under the facts of this case and consistent with the factors set forth in *Buenzli-Fritz*, Respondent should be required to pay 40 percent of the costs of this proceeding.

ORDER

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

SUSPENSION

- A.1. The certificate of Respondent Tanya L. Kraege to practice as an advanced practice social worker (certificate number 129264-121) in the State of Wisconsin is SUSPENDED for three years.
- A.2. Respondent shall mail or physically deliver all indicia of certification to the Department Monitor within 14 days of the effective date of this Order. Limited credentials can be printed from the Department of Safety and Professional Services website at <http://dsps.wi.gov/index.htm>.
- A.3. Upon a showing by Respondent of continuous, successful compliance for a period of at least two years with the terms of this Order, including at least 600 hours of active practice for every year the suspension is stayed, the Section may grant a petition by Respondent under paragraph D.6. for return of full credentials. The Section may, on its own motion or at the request of the Department Monitor, grant full credentials at any time.

STAY OF SUSPENSION

- B.1. The suspension may be stayed upon Respondent providing proof, which is determined by the Section or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three months.
- B.2. The Section or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. A substantial violation includes, but is not limited to, a

positive drug or alcohol screen. A repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Section or its designee may, in conjunction with any removal of any stay, prohibit Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.

- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
- (a) Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Section or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Section or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, drug and alcohol treatment with a Treater acceptable to the Section or its designee (Treater). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater by the Section or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only upon a determination by the Section or its designee after receiving a petition for modification as required by D.5., below.

- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Section, its designee, and any employee of the Division to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported monthly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Section or its designee. Copies of these releases shall immediately be filed with the Department Monitor.
- C.10. Respondent shall abstain from all use of over-the-counter medications or other substances (including but not limited to natural substances such as poppy seeds) which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation. It is Respondent's responsibility to educate herself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- C.11. Respondent shall report to Treater and the Department Monitor all medications and drugs taken by Respondent. Reports must be received within 24 hours of ingestion or

administration of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.

- C.12 Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that she may take from time to time. Over-the-counter medications and drugs that mask the consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation, shall not be taken unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.11.

Drug and Alcohol Screens

- C.13. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Section (Approved Program).
- C.14. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
- (a) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b) Production of a urine specimen at a collection site designated by the Approved Program within five hours of notification of a test.
- C.15. The Approved Program shall require the testing of urine specimens at a frequency of not less than 49 times per year, for the first year of this Order. After the first year, Respondent may petition the Board on an annual basis for a modification of the frequency of tests. The Board may adjust the frequency of testing on its own initiative at any time.
- C.16. The Department Monitor, Section or Section designee shall determine the tests to be performed upon the specimens. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Treater or the Section or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.17. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for an controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.

- C.18. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.
- C.19. The Approved Program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Admin. Code § SPS 7.11.

Practice Limitations

- C.20. Respondent may work as an advanced practice social worker in a setting in which Respondent has access to controlled substances. If treater subsequently recommends restrictions on such access, the Section or its designee may impose such restrictions.
- C.21. Respondent shall practice only under the direct supervision of a credentialed social worker or other licensed health care professional approved by the Section or its designee.
- C.22. Respondent shall practice only in a work setting pre-approved by the Section or its designee.
- C.23. Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all setting where Respondent works as an advanced practice social worker, currently or in the future.
- C.24. It is Respondent's responsibility to arrange for written reports from her employer or practice partner(s) to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active practice worked during that quarter. If a report indicates poor performance, the Section may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion.
- C.25. Respondent shall report to the Section any change of employment status, residence, address or telephone number within five days of the date of the change.

MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

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

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.
- D.3. Every three months, Respondent shall notify the Department Monitor of Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by Section

- D.4. If the Section or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Section or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.5. Respondent may petition the Section for modification of the terms of this Order or termination; however, no such petition for modification shall occur earlier than one year from the date of this Order. Any petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a credential within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.
- D.6. Respondent may petition the Section for termination of this Order any time after two years from the date of the initial stay of the suspension. However, no petition for termination shall be considered without a showing of continuous, successful compliance with the terms of the Order, for at least two years.

Costs of Compliance

- D.7. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Costs of Proceeding

- D.8. Respondent shall pay 40 percent of the recoverable costs of these proceedings, 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 directed to the attention of the Department Monitor at the address in paragraph D.1., above.

Additional Discipline

- D.9. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 448.02(3).

Dated at Madison, Wisconsin on May 6, 2016.

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