

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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

In the Matter of Disciplinary Proceedings  
Against Curt E. Clausen, Respondent

FINAL DECISION AND ORDER

Order No. **0005603**

**Division of Legal Services and Compliance Case No. 16 CPC 043**

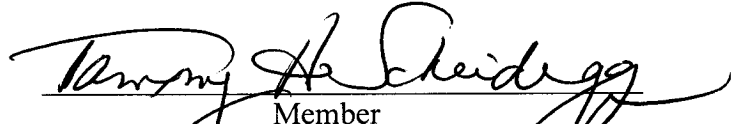
The State of Wisconsin, Marriage and Family Therapy, Professional Counseling and Social Work Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Marriage and Family Therapy, Professional Counseling and Social Work Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 30 day of May, ~~2017~~ 2018

  
Member  
Marriage and Family Therapy, Professional  
Counseling and Social Work Examining Board



**Before The  
State of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Disciplinary Proceedings  
Against Curt E. Clausen, Respondent

DHA Case No. SPS-17-0016  
DLSC Case No. 16 CPC 043

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**PROPOSED DECISION AND ORDER**

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

Curt E. Clausen  
4070 South Packard Avenue #3  
St. Francis, WI 53235

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

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

Attorney Sandra L. Nowack  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

**PROCEDURAL HISTORY**

These proceedings were initiated when the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Curt Clausen (Respondent) alleging that Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code § MPSW 20.02(9) by practicing or attempting to practice while impaired as a result of an illness which impaired his ability to appropriately carry out the functions delineated under the credential in a manner consistent with the safety of a client, patient or the public.

The Division served Respondent on July 28, 2017, by sending a copy of the Notice of Hearing and Complaint to Respondent's last known address. Respondent failed to file an

Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09, and failed to appear at the telephone prehearing conference held before the Division of Hearings and Appeals on September 6, 2017.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to appear for the prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default and issued a Notice of Default and Order on September 6, 2017. On September 29, 2017, the Division timely filed a recommended proposed decision and order.

### FINDINGS OF FACT

#### Facts Related to the Alleged Violation

Findings of Fact 1-11 are taken from the Division's Complaint filed against Respondent in this matter.

1. Respondent Curt E. Clausen is licensed in the State of Wisconsin to practice professional counseling, pursuant to license number 4489-125. This license was first granted to Respondent on November 18, 2010, and expired on February 28, 2017.
2. Respondent retains the right to renew the license until February 28, 2022, by paying a fee.
3. Respondent's most recent address on file with the Department is 4070 South Packard Avenue, #3, St. Francis, Wisconsin 53235.
4. On May 31, 2016, in the course of practicing as a professional counselor, Respondent falsified two documents that he knew would be used in legal proceedings pertaining to his patient.
5. Respondent knew that he should not have falsified the documents and cannot explain why he did it.
6. Shortly after he falsified the documents, Respondent reported the falsification to the district attorney and the patient's attorney.
7. In the three weeks before May 31, 2016, Respondent had headaches.
8. By May 31, 2016, Respondent had developed additional symptoms including intermittent difficulty in walking and unreliable recall. He could not remember how to send a text message and believed he might have been having "serious cerebral problems."
9. On approximately November 11, 2016, Respondent self-reported his conduct and medical impairment to the Department.

10. Respondent believes he has a serious neurologic condition.

11. Between December 21, 2016 and June 20, 2017, the Division attempted to contact Respondent several times via: telephone at the number he gave to the Division; email at the email address he gave to the Division; and certified mail to 4070 South Packard Avenue, #3, St. Francis, Wisconsin 53235, his address of record with the Department. Respondent did not respond, nor otherwise communicate with the Division.

#### Facts Related to Default

12. The Complaint and Notice of Hearing in this matter were served on Respondent on July 28, 2017, by both certified and regular mail consistent with Wis. Admin. Code § SPS 2.08. The Division served Respondent via certified and regular United States Postal Service at his most recent address on file with the Department. Neither the Notice of Hearing and Complaint sent to Respondent via certified mail, nor the Notice of Hearing and Complaint sent to Respondent via regular mail were returned as undelivered to the Department.

13. The Notice of Hearing advised Respondent: "If you do not provide a proper Answer within 20 days, you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

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

15. Following expiration of the 20-day time period to file an Answer, ALJ scheduled a telephone prehearing conference August 28, 2017, at 10:00 am. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which he could be reached for the conference no later than August 23, 2017. Respondent failed to provide a telephone number.

16. On August 25, 2017, the Notice of Telephone Prehearing Conference sent to Respondent was returned to the Division of Hearings and Appeals by the United States Postal Service, marked Return to Sender and Unable to Forward. Neither party appeared for the August 28, 2017 conference. Following the time scheduled for the conference, the Division contacted the ALJ and provided the ALJ with an email address and telephone number on file with the Division for Respondent. The ALJ attempted to contact Respondent at the telephone number provided but the number was not in service. In addition, on August 30, 2017, the ALJ emailed Respondent, sending him notice of the rescheduled telephone conference set for September 6, 2017, at 10:30 a.m. and requesting an updated telephone number and address. Respondent failed to respond. The Notice was also sent by regular mail.

17. At the prehearing conference held on September 6, 2017, the Division appeared but Respondent failed to appear. Based on Respondent's failure to file an Answer to the Division's Complaint, his failure to appear at the prehearing conference and his failure to provide a

telephone number at which he could be reached, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

18. On September 6, 2017, the ALJ issued a Notice of Default and Order finding that Respondent was in default and requiring the Division to serve no later than September 27, 2017, a recommended proposed decision and order.

19. On September 18, 2017, the Notice of Default and Order sent to Respondent was returned to DHA by the United States Postal Service, marked Return to Sender and Unable to Forward.

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

21. Respondent did not file a response to either the Notice of Default and Order or to the Division's recommended proposed decision and order.

### DISCUSSION AND CONCLUSIONS OF LAW

The Wisconsin Professional Counselor Section of the Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board (Section) has jurisdiction over this matter pursuant to Wis. Stat. §§ 440.20, 457.26(1) and 457.26(2)(h).

Wisconsin Stat. § 440.03(1) provides that the Department "may promulgate rules defining uniform procedures to be used by the department . . . and all examining boards and affiliated credentialing boards attached to the department or an examining board, for . . . conducting [disciplinary] hearings." These rules are codified at Wis. Admin. Code ch. SPS 2.

#### Default

As stated in the September 6, 2017 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the prehearing conference held on September 6, 2017. As a result, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

#### Violations of Wisconsin Statute and Administrative Code

Following an investigation and disciplinary hearing, if the Section determines that a professional counselor has engaged in unprofessional conduct or has violated any rule promulgated under Wis. Stat. ch. 457, the Section may "reprimand a credential holder or deny, limit, suspend, or revoke a credential." Wis. Stat. § 457.26(2)(f) and (h). Wisconsin Admin. Code § MPSW 20.02, is a rule promulgated by the Section pursuant to Wis. Stat. § 457.03(2).

Pursuant to Wis. Admin. Code § MPSW 20.02, unprofessional conduct includes "[p]racticing . . . while the credential holder is impaired . . . as a result of an illness which impairs the credential holder's ability to appropriately carry out the functions delineated under the credential in a manner consistent with the safety of a client, patient, or the public." By his

own report, Respondent violated Wis. Admin. Code § MPSW 20.02(9), by practicing while he was impaired as a result of an illness that rendered him unable to appropriately carry out the functions delineated under the credential, in a manner consistent with the safety of a client, patient or the public. In the course of his professional practice, Respondent falsified two legal documents, and cannot explain why he did so, except to say he believes he has a neurological condition. In light of Respondent's violation of Wis. Admin. Code § MPSW 20.02, he is subject to discipline pursuant to Wis. Stat. § 457.26(2).

### 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 recommends that Respondent's right to renew his credential be indefinitely suspended, with conditions discussed below to stay or remove the suspension. Given that the recommended discipline is consistent with the purposes articulated in *Aldrich* and because Respondent has made no argument to the contrary, I adopt the Division's recommendations.

Protection of the public is paramount in this case. By his own admission, Respondent is impaired to a degree that his professional behavior has been irrational and unreliable. At the same time, despite significant efforts on the part of the Division, Respondent has made himself unavailable to the Section and his current health status is unknown to the Section. The result is that despite the Section's knowledge that Respondent was impaired, without a public order, it can take no action in informing employers or the public of the impairment. Nor can the Section monitor Respondent's potential rehabilitation or deterioration.

Respondent's credential is currently expired, but without this Order, Respondent could renew the credential anytime through February 28, 2022, if Respondent simply pays a fee.

To achieve public protection under the circumstances of this case, Respondent's right to renew his credential is indefinitely suspended. Respondent may petition the Section to stay or remove the suspension by undergoing a fitness to practice evaluation that establishes to the satisfaction of the Section or its designee that Respondent is able to safely, reliably and competently engage in practice as a professional counselor. In addition to removing or staying the suspension, the Section may limit Respondent's credential if doing so protects the public.

This disposition protects the public by requiring Respondent to establish his fitness to practice. It also furthers Respondent's rehabilitation by motivating him to seek the evaluation and treatment he needs, without depriving him of the possibility of retaining his credential and resuming professional practice. Finally, the recommended disposition serves the purpose of general deterrence by encouraging licensees with relevant health impairments to seek treatment.

The facts of this case and the recommended discipline are akin to those in *In the Matter of Disciplinary Proceedings Against Deborah J. Mishler, L.P.N.*, Order No. 2531 (Jan. 8, 2015).<sup>1</sup> In that case, a licensed practical nurse, Deborah Mishler, self-reported to the Division that she was in trouble because of perceived mental illness, with which she said she was not afflicted. Mishler's communication was disjointed and an investigation was opened to assess her ability to safely and reliably practice nursing. During the Division's investigation, the Division asked Mishler to undergo a psychological evaluation and an examination to determine whether she was fit to practice. Mishler declined to obtain an evaluation and invoked her right to a hearing. During the pendency of the proceedings, Mishler's license expired.

After the contested hearing, the Board of Nursing accepted the ALJ's determination that Mishler had engaged in acts that showed her unfit or incompetent by reasons of mental incompetency. Mental incompetency "is evidenced by conduct which reflects an impaired ability of the licensee to safely or reliably perform duties." Wis. Admin. Code § N 7.03(3). The Board indefinitely suspended Mishler's right to renew her license until she underwent a psychological evaluation and the Board was satisfied that she could safely and reliably perform her duties as a nurse. As in *Mishler*, it is reasonable for the Section to indefinitely suspend Respondent's right to renew his license until he undergoes a psychological evaluation and the Section is satisfied that he is fit to practice his profession.

### Costs

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

The following facts are particularly relevant to the instant case. The Division proved the count alleged. This is not a case where the Division wasted resources or incurred additional costs by alleging multiple counts and then failing to prove those counts. Additionally, Respondent's conduct is serious in nature and the Division sought and was granted substantial discipline, indefinite suspension of Respondent's right to renew his credential. Moreover, by failing to participate in these proceedings, Respondent has demonstrated a lack of cooperation. By virtue of his nonparticipation, Respondent has made no argument concerning whether costs

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<sup>1</sup> A copy of this order may be found at <https://online.drl.wi.gov/decisions/2015/ORDER0002531-00010657.pdf>.



should be assessed against him. Finally, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. As such, fairness weighs heavily in favor of requiring Respondent to pay the costs of this proceeding which resulted in significant discipline rather than spreading the costs among all credential holders in Wisconsin.

Accordingly, all of the costs of this proceeding should be assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

### ORDER

Accordingly, it is hereby ORDERED that Respondent Curt E. Clausen's right to renew his license to practice professional counseling in the State of Wisconsin, license number 4489-125, is SUSPENDED indefinitely. The suspension may be stayed or removed after Respondent undergoes a psychological evaluation by an evaluator preapproved by the Section, under the terms enumerated below, and the Section is satisfied that doing so does not place the public at an unacceptable risk of harm.

1. The evaluator must be preapproved by the Section's designee, under the following terms:

a. Before undergoing the evaluation, Respondent shall submit to the Department Monitor a copy of the evaluator's curriculum vitae, and copies of professional licenses and certifications held.

b. The evaluator must be a licensed doctorate-level psychologist who is certified in a relevant field of practice by the American Board of Professional Psychology or a licensed psychiatrist who is certified in a relevant field of practice by the American Board of Psychiatry and Neurology. At the discretion of the Section's designee, additional experience in a relevant field of practice may be substituted for Board certification. At the discretion of the Section's designee, alternate Board recognitions, such as fellowships, may also be substituted for Board certification.

c. The evaluator must have had no previous personal or professional relationship with Respondent, and may not have previously evaluated or treated Respondent.

d. The evaluator shall have had a minimum of ten years of experience in the practice of psychology or psychiatry, and may not have been previously disciplined by any credentialing authority.

2. While the evaluator remains responsible for the final evaluation, the evaluator may delegate testing or other components of the evaluation to other mental or physical health professionals who the evaluator deems competent to conduct those tests or perform the delegated task.

3. The exact tests chosen for administration are within the discretion of the evaluator. However, the evaluation must include a comprehensive interview of the individual and the use of rating scales, neuropsychological testing, and personality tests.

4. The evaluation shall include an assessment of Respondent's ability to appropriately manage the triggers, degrees, and effects of emotional and professional stressors.

5. Within 30 days of the completion of the evaluation, a written report regarding the results shall be submitted to the Department Monitor.

6. The evaluator shall identify restrictions on the nature of practice or practice setting or requirements for supervision of practice, if any, which are necessary to render Respondent able to practice professional counseling with reasonable skill and safety.

7. The evaluator shall identify specific mental health treatment goals, if any, which must be met before Respondent is able to practice professional counseling with reasonable skill and safety.

8. The evaluator's opinions and conclusions must be rendered to a degree of reasonable professional certainty.

9. Respondent shall authorize release directly to the evaluator records of neurological and mental health evaluations, diagnosis, treatment and treatment summaries that Respondent has undergone and such other records that the evaluator determines are necessary to a competent evaluation.

10. Respondent is responsible for the costs associated with the evaluation.

11. Respondent shall authorize the evaluator to discuss the results of the evaluation with the Section or its designee.

12. If the Section decides to stay or remove the suspension, the Section may impose such limitations on Respondent's license or right to renew that license as it deems reasonable and consistent with public protection.

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

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

IT IS FURTHER ORDERED that Respondent Curt E. Clausen, shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to the Department Monitor at the address above.

IT IS FURTHER ORDERED that the terms of this Order are effective the date of the Final Decision and Order in this matter is signed by the Section.

Dated at Madison, Wisconsin on October 4, 2017.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
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By:   
Jennifer E. Nashold  
Administrative Law Judge