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Before The
State of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the Matter of Disciplinary Proceedings Against
Daniel D. Cousins, Sr., A.P.S.W., C.S.A.C.,
C.S.-I.T., Respondent

FINAL DECISION AND ORDER

Order **ORDER 0006739**

Division of Legal Services and Compliance Case Nos. 17 RSA 011 and 18 RSA 013

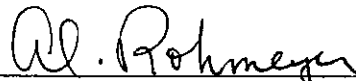
The State of Wisconsin, Department of Safety and Professional Services, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Safety and Professional Services.

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

Dated at Madison, Wisconsin on the 8th day of April, 2020.



Aloysius Rohmeyer
Chief Legal Counsel

Department of Safety and Professional Services



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
DANIEL D. COUSINS, SR., A.P.S.W., C.S.A.C.,
C.S.-I.T., Respondent

DHA Case No. SPS-19-0054
DLSC Case Nos. 17 RSA 011 and
18 RSA 013

PROPOSED DECISION AND ORDER

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

Daniel D. Cousins, Sr., A.P.S.W., C.S.A.C., C.S.-I.T.,
[REDACTED]
Hayward, WI 54843

Wisconsin Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

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

Attorney Zachary J. Peters
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

The proceedings were initiated on September 30, 2019, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal complaint against Respondent Daniel D. Cousins, Sr., A.P.S.W., C.S.A.C., C.S.-I.T., alleging that Respondent engaged in unprofessional conduct by violating, or aiding and abetting a violation of, any law or rule substantially related to practice as a substance abuse professional, in violation of Wis. Admin. Code § SPS 164.01(2)(b); by performing or offering to perform services for which the substance abuse professional is not qualified by education, training, or experience, in violation of Wis. Admin. Code § SPS 164.01(2)(f); by engaging in false, fraudulent, misleading, or deceptive behavior associated with the practice as a substance abuse professional, including advertising, billing practices, or reporting or falsifying or inappropriately altering patient records, in violation of Wis. Admin. Code § SPS 164.01(2)(i); by obtaining or attempting to obtain any compensation by fraud, misrepresentation, deceit, or undue influence in the course of practice, in

violation of Wis. Admin. Code § SPS 164.01(2)(p); by failing to conduct an assessment, evaluation, or diagnosis as a basis for treatment provided, in violation of Wis. Admin. Code § SPS 164.01(2)(s); by failing to maintain adequate records relating to services provided in the course of a professional relationship, in violation of Wis. Admin. Code § SPS 164.01(2)(t); by engaging in a pattern of negligence as a substance abuse professional, in violation of Wis. Admin. Code § SPS 164.01(2)(v); and by failing to respond honestly and in a timely matter to a request for information from the department, in violation of Wis. Admin. Code § SPS 164.01(2)(w).

The Division served Respondent on September 30, 2019, by sending a copy of the Notice of Hearing and Complaint in this matter via certified and First Class mail to the Respondent's address located at 10640N O'Brien Hill Road, Hayward, Wisconsin 54843. On October 7, 2019, the Division received confirmation of delivery of certified mail pertaining to the mailing of the Notice of Hearing and Complaint sent to Respondent. Respondent personally signed for the documents on October 2, 2019. The Notice of Hearing advised the Respondent that he had twenty days from the date of service of the Complaint to file a written answer to the allegations in the Complaint. Respondent did not file an Answer.

Following the expiration of the 20-day time period to file an Answer, the Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for November 7, 2019. Respondent participated in the prehearing conference on November 7, 2019. At the prehearing conference, the Division moved for default judgment against Respondent based upon his failure to file an Answer; but Respondent requested, and was granted, an extension of time to file an Answer on or before November 15, 2019. Respondent was advised that a failure to file an Answer by the extended due date would result in a finding of default.

Respondent did not file an Answer by the extended November 15, 2019 deadline. Therefore, on November 18, 2019, the Division renewed its motion for default. On November 19, 2019, Respondent acknowledged that he failed to file an Answer but claimed "ignorance with this process." The ALJ set a briefing schedule requiring the Division to file a Motion for Default Judgment on or before November 26, 2019, and allowing Respondent an opportunity to file a response by December 10, 2019. The Division timely filed its motion; however, Respondent never filed a response. Therefore, on December 19, 2019, the ALJ issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order by January 10, 2020. The Division timely filed its submission.

FINDINGS OF FACT

Facts from the Complaint Related to the Alleged Violations

1. Respondent Daniel D. Cousins, Sr., A.P.S.W., C.S.A.C., C.S.-I.T., is credentialed in the state of Wisconsin as an advanced practice social worker, having credential number 130318-121, first issued on July 26, 2016, and current through February 28, 2021. Respondent is also credentialed in the state of Wisconsin as a clinical substance abuse counselor, having credential number 15605-132, first issued on August 4, 2011, and current through February 28, 2021. Respondent is also credentialed in the state of Wisconsin as a clinical supervisor-in-training, having credential number 15659-133, first issued on February 8, 2017, and current through

February 28, 2021. Respondent was credentialed in Wisconsin as a social worker, having credential number 10897-120, first issued on March 14, 2014, and expired on February 28, 2017. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew his credential to practice as a social worker upon payment of a fee until February 27, 2022.

2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is 10640N O'Brien Hill Road, Hayward, Wisconsin 54843.

3. At all times relevant to this proceeding, Respondent was practicing as an advanced practice social worker, social worker, and clinical substance abuse counselor. Beginning February 8, 2017, Respondent was also practicing as a clinical supervisor-in-training.

4. From December 1, 2016, through February 28, 2018, Respondent was self-employed at a clinic he owned, Northwoods Behavioral Health Services, LLC, (NBHS), located in Hayward, Wisconsin. NBHS closed on February 28, 2018.

5. On September 26, 2016, Respondent emailed a Sawyer County Circuit Court Judge to request that all current and future bond monitoring cases be assigned to NBHS as of December 1, 2016. Respondent also outlined the Pre-Trial and Post-Conviction monitoring he would offer as part of the proposed arrangement. All the supervision programs required participants to submit urine drug screens.

6. NBHS obtained certification under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) to perform human specimen testing, including specific testing and confirmation testing of human urine for urine drug screens on February 16, 2017.

7. NBHS obtained certification under Wis. Admin. Code, Ch. DHS 75 to provide outpatient substance abuse treatment on March 1, 2017.

Supervision

8. On September 30, 2016, Supervisor A verbally agreed to supervise Respondent's counseling practice so that Respondent could complete the credentialing process for NBHS through the Department of Health Services (DHS), but Respondent was not to begin services until a signed agreement for supervision services with Supervisor A was in place.

9. On September 30, 2016, Supervisor A asked to review Respondent's policies and procedures for his planned opening of NBHS. At that time, Supervisor A also asked for the contract or agreement for supervision services.

10. On December 19, 2016, Supervisor A gave Respondent her licensure information and Respondent listed Supervisor A as his supervisor on the Wis. Admin. Code § DHS 75.13 application for NBHS.

11. On March 1, 2017, Supervisor A met with Respondent and Respondent allegedly assured her that he was not performing any counseling services nor billing for any related services.

12. On March 10, 2017, Supervisor A reiterated that an agreement for supervision services still needed to be drafted and agreed upon by Supervisor A and Respondent. Respondent allegedly stated that he had not performed any treatment or counseling services and had not billed anyone for services.

13. On April 11, 2017, Supervisor A refused to enter into a supervisor relationship with Respondent due to believing that he was performing unsupervised independent mental health counseling.

14. On April 18, 2017, Supervisor A sent the Department a letter requesting that her name be removed from all paperwork regarding Respondent and NBHS. Supervisor A stated that she had no intention of entering into a written agreement with Respondent upon him starting his program at NBHS. Supervisor A indicated that she never provided supervision services to Respondent.

15. On February 26, 2018, a Health Services Specialist with the Department of Health Services Division of Quality Assurance (DQA) conducted a telephone interview with Supervisor B. Supervisor B confirmed that she was the clinical supervisor for Respondent from June 15, 2017, through January 25, 2018.

16. Supervisor B acknowledged that she did not discuss any client's specific case nor any client's clinical issue with Respondent during the seven (7) months she was Respondent's supervisor.

17. Supervisor B confirmed that no clinical staffing took place at NBHS from June 15, 2017, through January 25, 2018.

Patient A

18. In January 2017, Patient A's probation agent ordered him to see Respondent at NBHS for outpatient Alcohol and Other Drug Abuse (AODA) treatment and mental health counseling.

19. Patient A attended five (5) treatment sessions with Respondent.

20. Respondent had Patient A complete treatment paperwork at NBHS and told Patient A that he could complete his Intensive Supervision Program (ISP) and urine drug screens at NBHS.

21. Patient A terminated his treatment with Respondent due to the quoted cost of the sessions. The cost associated with the five (5) sessions of treatment was forgiven by NBHS and no bill was sent to Patient A.

Patient B

22. In November 2016, Patient B first met with Respondent regarding outpatient AODA treatment due to related legal concerns. After the initial meeting, Patient B began treating with Respondent at NBHS. Respondent recommended Patient B undergo two counseling sessions per week.

23. Patient B was insured through Medicaid and Respondent could not accept Medicaid insurance. Respondent allegedly told Patient B that once Respondent could accept Medicaid insurance, Patient B would be reimbursed for any treatment sessions with Respondent, as Respondent could change the billing date of the sessions. Patient B ultimately received no reimbursement through insurance.

24. Patient B's father paid for Patient B's treatment sessions with Respondent, totaling four (4) sessions, that took place on December 14, December 16, December 26, 2016; and January 2, 2017. Patient B's father also paid for a urine drug screen administered by Respondent on December 16, 2016.

25. On December 15, 2016, in Sawyer County Circuit Court case number 16CF253, Respondent was listed as Patient B's counselor through NBHS. On January 27, 2017, the Court ordered Patient B to continue treatment with Respondent and listed Respondent as Patient B's counselor through NBHS.

26. Patient B switched treatment providers due to Respondent not being certified to perform the court-ordered counseling and drug testing for Sawyer County.

Patient C

27. Patient C was referred to NBHS by a county court to complete a substance abuse assessment due to pending criminal charges.

28. On January 17, 2018, Patient C signed a consent to treatment and other intake forms. On January 24, 2018, Patient C completed a signed authorization to allow Respondent to disclose confidential treatment information to Patient C's attorney and a local district attorney.

29. The Wisconsin Medicaid Paid Claim List confirmed that Respondent's billing indicated that he saw Patient C for substance abuse outpatient individual counseling on January 17, January 24, January 29, and January 31, 2018.

30. On February 21, 2018, Respondent had Patient C complete a mental health screening using a PHQ-9 questionnaire.

31. On February 26, 2018, a Health Services Specialist with the Department of Health Services Division of Quality Assurance (DQA) reviewed Patient C's patient file at NBHS. The DQA Health Services Specialist found that Patient C's file had no placement documentation demonstrating that Patient C needed outpatient level of care. Patient C's patient file also did not contain a complete assessment or summary.

Patient D

32. On December 19, 2017, Patient D self-referred himself to NBHS seeking services following an OWI (3rd) charge.

33. On February 26, 2018, a Health Services Specialist with DQA reviewed the appointment calendar at NBHS and noted that Respondent saw Patient D on December 19, December 26, 2017; January 2, January 9, January 15, January 30, February 2, February 7, February 12, February 16, and February 21, 2018, for a total of eleven appointments.

34. The Wisconsin Medicaid Paid Claim List confirmed that Respondent's billing indicated that he saw Patient D for substance abuse outpatient individual counseling on December 19, December 26, 2017; January 2, January 9, January 15, and January 30, 2018.

35. On February 26, 2018, the DQA Health Services Specialist reviewed Patient D's patient file at NBHS. The DQA Health Services Specialist found that Patient D's patient file had no placement documentation demonstrating that Patient D needed outpatient level of care. Patient D's patient file did not contain a complete assessment, summary, or treatment plan. Patient D's patient file did not contain any progress notes for nine of the eleven appointments at NBHS. Patient D's patient file contained insufficient progress notes consisting of only one- or two-word phrases for the appointments on January 15, and February 16, 2018.

Patient E

36. Patient E was referred to NBHS by an assessment agency of drivers with alcohol or controlled substance problems to receive outpatient treatment in order to regain his driving privileges.

37. On April 19, 2018, Respondent obtained a signed authorization from Patient E to disclose confidential treatment information to the assessment agency because Patient E had been placed on a driver safety plan (DSP). The DSP required that Patient E receive an outpatient assessment and follow through with any treatment recommendations.

38. On June 19, 2017, Patient E first presented to NBHS to seek treatment to fulfill the requirements of his DSP.

39. On February 26, 2018, a Health Services Specialist with DQA reviewed the appointment calendar at NBHS and noted that Respondent saw Patient E on July 6, July 20, September 19, October 10, October 19, November 9, November 13, and November 17, 2017. On July 6, 2017, Respondent had Patient E complete a mental health screening using a PHQ-9 questionnaire.

40. On March 1, 2018, the DQA Health Services Specialist confirmed that the assessment agency received a discharge notice from Respondent stating that Patient E completed substance abuse outpatient treatment in November 2017.

41. On February 26, 2018, the DQA Health Services Specialist reviewed Patient E's patient file at NBHS. The DQA Health Services Specialist found that Patient E's patient file had no placement documentation demonstrating that Patient E needed outpatient level of care or supporting Patient E's treatment needs. Patient E's patient file did not contain a complete assessment, summary, or treatment plan. Patient E's patient file did not contain any progress notes except for a single visit on July 28, 2017.

42. On February 26, 2018, the DQA Health Services Specialist interviewed Respondent. Respondent acknowledged the missing, required documentation in Patient C's, Patient D's, and Patient E's patient files. Respondent alleged that Patient C, Patient D, and Patient E were only receiving "education services" from Respondent.

Advertising

43. On December 6, 2016, in a Facebook post on the business profile for NBHS, Respondent wrote that NBHS was providing "outpatient mental and chemical health therapy."

44. On December 26, 2016, in a Facebook post on the business profile for NBHS, Respondent wrote encouraging readers to "[m]ake an appointment today for an [sic] mental health/chemical health evaluation and start off your 2017 on a new path!"

45. On January 24, 2017, in a Facebook post on the business profile for NBHS, Respondent wrote "...we continue to offer individual and couples therapy for the young and not so young!!"

46. The NBHS Facebook business profile was still active as of January 3, 2020. The NBHS Facebook business profile categorizes NBHS as a hospital and lists a phone number and address. The NBHS Facebook business profile lists that NBHS provides Mental Health Counseling services, Outpatient Mental Health Evaluation/Assessment services, and Pre-Trial services including mental health counseling.

47. The NBHS website, last visited June 19, 2019, contains the statement, "[w]e offer the most comprehensive counseling and behavioral health services in the Northwoods!" The NBHS website further offers services to "help with any mental health or substance abuse problem," including "depression," "anxiety," "adult children of dysfunctional families," "codependency," "grief," "Post Traumatic Stress Disorder," "LGBT Population," "Personality Disorders," "criminal thinking," "behavioral problems," "sexual abuse," "Attention Deficit Disorder," and "chronic pain." The NBHS website also offered "Pre-Trial Services."

48. On December 17, 2016, a newspaper article entitled "Northwoods Behavioral Health Services, LLC: Achieving a Balance in well-being" was published in Four Seasons Newspaper. Respondent was not the author of the article, but was consulted and quoted for the article. The article published the following statements:

- a. "Licensed therapist [Respondent] opened Northwoods Behavioral Health Services (NBHS) on Dec. 1. NBHS offers a wide variety of counseling services, including employee assistance program (EAP), chemical testing, court compliance, and Christian Counseling."
- b. "NBHS offers personalized and confidential mental health counseling services to all ages, families, couples and groups."
- c. "The psychotherapists use therapeutic techniques which include cognitive behavior therapy, relaxation, hypnosis, psychological testing and more."

- d. "Services are provided for eating disorders, anxiety, depression, alcohol and drug abuse, stress, Attention Deficit Disorder, chronic pain, marital issues, abuse, psychological testing and much, much more."
- e. "[Respondent] said a unique aspect of his services is working with the court system and attorneys of individuals who have been charged with a criminal offense."
- f. "NBHS is located at 15617-B U.S. Hwy. 63 North in Hayward. The office has a group meeting room, individual patient settings and therapist offices. Hours are 8 a.m. to 5 p.m. on weekdays. NBHS will also see clients outside of the schedule [sic] business hours by appointment...To set up a counseling appointment, learn more about EAP or have a chemical test, call [NBHS phone number]."

49. In a photograph accompanying the newspaper article, Respondent can be seen with NBHS brochures. The NBHS brochures indicate that Respondent was the only therapist at NBHS.

50. The NBHS brochure stated that the types of services provided included those for "depression," "anxiety," "adult childress [sic] of dysfunctional families," "codependency," "stress," "eating disorders," "grief," "Post-Traumatic Stress Disorder," "Gay and Lesbian Issues," "Personality Disorders," "criminal thinking," "behavioral problems," "Attention Deficit Disorder," "chronic pain," "Bond Monitoring," "Pre-Trial Programming," and "Post-Conviction Programming."

51. The NBHS brochure also included a section on "Mental Health Counseling" which stated, "Our experienced and caring therapists provide personalized and confidential mental health counseling services to individuals of all ages, families, couples, and groups. We rely upon proven therapeutic techniques including cognitive behavioral therapy, EMDR, relaxation, hypnosis, play therapy, supportive therapy and psychological testing."

52. The NBHS brochure stated that NBHS "offers chemical testing for a wide variety of reasons..."

53. The NBHS brochure also included the following statements:

- a. "Bond Monitoring is a court ordered supervision program designed to monitor bond conditions of individuals who have been charged with a criminal offense."
- b. "Pre-Trial Programming is a voluntary Intensive Supervision Program."
- c. "Pre-Trial Programming offers a more intensive supervision program for those who chose to take a more active role in making permanent lifestyle changes from their former habits that have resulted in their current criminal matter."

54. NBHS did not obtain certification to provide intervention services, including intensive supervision services, as required under Wis. Admin. Code § DHS 75.16 until March 1, 2017.

55. On June 12, 2018, the Department requested a response from Respondent relating to Complaint numbers 18 RSA 013 and 18 SOC 017.

56. On June 27, 2018, Respondent requested an extension to respond to the Complaints. The Department granted the extension and requested a response from Respondent by July 12, 2018. Respondent never responded to the Complaints.

Facts Related to Default

57. The Notice of Hearing and Complaint in this matter were served on Respondent on September 30, 2019, by both certified and First Class mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing instructed Respondent: "If you do not provide a proper Answer within 20 days, you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Department may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

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

59. Following the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for November 7, 2019. Respondent participated in the prehearing conference on November 7, 2019. At the prehearing conference, the Division moved for default judgment against Respondent. Respondent requested and was granted an extension of time to file an Answer on or before November 15, 2019. Respondent was advised that a failure to file an Answer by the extended due date would result in a finding of default.

60. Respondent did not file an Answer by the extended deadline of November 15, 2019.

61. On November 18, 2019, the Division renewed its motion for default.

62. On November 19, 2019, Respondent acknowledged that he failed to file an Answer but claimed "ignorance with this process." The ALJ set a briefing schedule requiring the Division to file a Motion for Default Judgment on or before November 26, 2019, and allowing Respondent an opportunity to file a response by December 10, 2019.

63. The Division timely filed its motion; however, Respondent never filed a response.

64. On December 19, 2019, the ALJ issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order by January 10, 2020. The Division timely filed its submission.

DISCUSSION AND CONCLUSIONS OF LAW

Jurisdictional Authority

Pursuant to Wis. Admin. Code § SPS 2.10(2), the undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1).

Default

As stated in the December 19, 2019 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to respond to the Division's Motion for Default Judgment. *See* Wis. Admin. Code §§ SPS 2.14, HA 1.07(3). Allegations in a complaint are deemed admitted when not denied. Wis. Admin. Code § SPS 2.09(3). Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

Violations

The Division alleges that Respondent is subject to discipline pursuant to Wis. Stat. § 440.88(6), which grants the Department the authority to reprimand, revoke, deny, suspend, or limit the certification of any substance abuse counselor, clinical supervisor, or prevention specialist for unprofessional conduct, incompetence, or professional negligence. Unprofessional conduct "comprises any practice or behavior that violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public." Wis. Admin. Code § SPS 164.01(2). Unprofessional conduct includes any of the following:

(b) Violating, or aiding and abetting a violation of, any law or rule substantially related to practice as a substance abuse professional. A certified copy of a judgment of conviction is prima facie evidence of a violation.

...

(f) Performing or offering to perform services for which the substance abuse professional is not qualified by education, training, or experience to perform;

...

(i) Engaging in false, fraudulent, misleading or deceptive behavior associated with the practice as a substance abuse professional, including advertising, billing practices, or reporting or falsifying or inappropriately altering patient records.

...

(p) Obtaining or attempting to obtain any compensation by fraud, misrepresentation, deceit or undue influence in the course of practice.

...

(s) Failing to conduct an assessment, evaluation, or diagnosis as a basis for treatment provided.

(t) Failing to maintain adequate records relating to services provided a patient in the course of a professional relationship.

...

(v) Engaging in a single act of gross negligence or in a pattern of negligence as a substance abuse professional.

(w) Failing to respond honestly and in a timely manner to a request for information from the department. Taking longer than 30 days to respond to a department request creates a rebuttable presumption that the respond is not timely.

...

Wis. Admin. Code §§ SPS 164.01(2)(b), (f), (i), (p), (s), (t), (v), and (w).

The undisputed facts establish that at all times relevant to this proceeding, Respondent was practicing as an advanced practice social worker, social worker, and clinical substance abuse counselor. Beginning February 8, 2017, Respondent was also practicing as a clinical supervisor-in-training. From December 1, 2016, through February 28, 2018, Respondent was self-employed at a clinic he owned, Northwood Behavioral Health Services, LLC, (NBHS), located in Hayward, Wisconsin. NBHS closed on February 28, 2018. On September 26, 2016, Respondent emailed a Sawyer County Circuit Court Judge and requested that all current and future Bond Monitoring cases be assigned to NBHS as of December 1, 2016. Respondent also outlined the Pre-Trial and Post-Conviction monitoring he would offer as part of the proposed arrangement. All the supervision programs required participants to submit urine drug screens. The United States Federal Government and the state of Wisconsin require that a facility obtain Clinical Laboratory Improvement Amendments of 1988 (CLIA) certification to perform human specimen testing, including specific testing and confirmation testing of human urine for urine drug screens. NBHS obtained CLIA certification on February 16, 2017.

In order to obtain the necessary credentials for his business from the Department of Health Services (DHS), the Respondent requested the assistance from a third party ("Supervisor A") in or around September 30, 2016. However, the agreement for supervision was not reduced to writing. Despite there being no written signed agreement for supervision services, the Respondent listed "Supervisor A" as his supervisor, along with her licensure information, on his application for licensure for NBHS. The Respondent represented to "Supervisor A" that he was not performing counseling services or treatment and not billing for those services in March 2017. Based upon "Supervisor A's" belief that Respondent was performing unsupervised mental health counseling and due to there not being a written agreement between the Respondent and "Supervisor A", she refused to supervise him and requested that the Department remove her name from any paperwork related to Respondent and NBHS. (Findings of Fact, ¶¶ 8-14)

On February 26, 2018, a Health Services Specialist with the Department of Health Services Division of Quality Assurance (DQA) conducted a telephone interview with another third party ("Supervisor B") that the Respondent had contacted to supervise his practice. Supervisor B confirmed that she was the clinical supervisor for Respondent from June 15, 2017, through January 25, 2018. Supervisor B acknowledged that she did not discuss any client's specific case nor any client's clinical issue with Respondent during the seven (7) months she was Respondent's supervisor. Supervisor B confirmed that no clinical staffing took place at NBHS from June 15, 2017, through January 25, 2018. (Findings of Fact, ¶¶ 15-17)

Between December 2016 and January 2018, the Respondent engaged in outpatient Alcohol and Other Drug Abuse (AODA) treatment and mental health counseling with at least five individuals despite not being properly certified. In addition, the Respondent submitted billing for those services to the Wisconsin Medicaid program. According to an investigation and audit conducted by the Department of Health Services Division of Quality Assurance, the Respondent had failed to complete necessary assessment paperwork, summary/treatment plans, progress notes and/or documentation to support the need for outpatient care. (Findings of Fact, ¶¶ 18-42)

Between December 2016 and June 2019, the Respondent maintained a website and profile on social media with regard to his business, NBHS, wherein he advertised providing outpatient

mental health therapy, behavioral health/AODA treatment, comprehensive assessments, chemical testing, court ordered supervision and various other counseling services. (Findings of Fact, ¶¶ 43-54).

Wisconsin Admin. Code ch. DHS 35 requires that outpatient clinics providing mental health services obtain and maintain certification under that chapter and maintain compliance with that chapter. NBHS did not obtain certification under Wis. Admin. Code ch. DHS 35. Wisconsin Admin. Code § DHS 75.13 and 75.16 requires that clinics providing outpatient substance abuse treatment services obtain and maintain certification under Wis. Admin. Code ch. DHS 75 and maintain compliance with that chapter. NBHS did not obtain certification under Wis. Admin. Code ch. DHS 75 until March 1, 2017.

On June 12, 2018, the Department requested a response from Respondent relating to Division case numbers 18 RSA 013 and 18 SOC 017. On June 27, 2018, Respondent requested an extension to respond to the Complaints. The Department granted the extension and requested a response from Respondent by July 12, 2018. Respondent never responded to the Complaints.

Respondent engaged in unprofessional conduct by violating, or aiding and abetting a violation of, any law or rule substantially related to practice as a substance abuse professional, in violation of Wis. Admin. Code § SPS 164.01(2)(b); by performing or offering to perform services for which the substance abuse professional is not qualified by education, training, or experience, in violation of Wis. Admin. Code § SPS 164.01(2)(f); by engaging in false, fraudulent, misleading, or deceptive behavior associated with the practice as a substance abuse professional, including advertising, billing practices, or reporting or falsifying or inappropriately altering patient records, in violation of Wis. Admin. Code § SPS 164.01(2)(i); by obtaining or attempting to obtain any compensation by fraud, misrepresentation, deceit, or undue influence in the course of practice, in violation of Wis. Admin. Code § SPS 164.01(2)(p); by failing to conduct an assessment, evaluation, or diagnosis as a basis for treatment provided, in violation of Wis. Admin. Code § SPS 164.01(2)(s); by failing to maintain adequate records relating to services provided in the course of a professional relationship, in violation of Wis. Admin. Code § SPS 164.01(2)(t); by engaging in a pattern of negligence as a substance abuse professional, in violation of Wis. Admin. Code § SPS 164.01(2)(v); and by failing to respond honestly and in a timely matter to a request for information from the department, in violation of Wis. Admin. Code § SPS 164.01(2)(w).

As a result of the above conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 440.88(6).

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

“Protection of the public is the purpose of requiring a license.” *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a credential is granted to an individual, the Department is assuring the public that the credentialed individual is competent in his or her

profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the Board, via the Department, cannot assure the public of the licensee's competence to practice the profession, particularly in situations where a license refused to cooperate, then discipline, including suspension, is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984).

The Division recommends the following as discipline against the Respondent: (1) that Respondent's credentials to practice as a substance abuse counselor and clinical supervisor-in-training in the state of Wisconsin be suspended for one (1) year from the date of this Order; (2) that Respondent be required to complete three (3) hours of remedial education on the subject of documentation and nine (9) hours of remedial education on the subject of professional ethics as those topics relate to the practice of substance abuse counseling and clinical supervision; and (3) that Respondent be required to comply with any Order entered against his credential to practice advanced practice social work in the state of Wisconsin (credential no. 130318-121). Given that the Respondent has made no argument to the contrary and because the recommended discipline is consistent with the purposes articulated in *Aldrich* and case law, I adopt the Division's recommendation.

Based upon the undisputed facts alleged in the Complaint, Respondent repeatedly ignored requirements under Wis. Admin. Code chs. DHS 35 and 75 to obtain the proper credentials for his clinic to provide outpatient mental health care and intensive supervision for patients. Not only did Respondent deliberately ignore those requirements and continue to provide such services, he actively attempted to expand his clinic's practice of those services and even advertised the immediate ability of his clinic to provide such services when not credentialed to do so. Respondent's continued advertising for services which he was not legally able to provide was deceptive and fraudulent. Respondent's attempt to later classify services already provided to specific patients as something other than what they were, to circumvent the law, demonstrated further fraudulent behavior and that Respondent was aware that his conduct was in violation of the rules governing his and his clinic's credentials. Respondent also ignored multiple federal and state credentialing and supervision requirements in his practice. Respondent continued to provide certain services and advertise such services despite not complying with federal and state regulations limiting or governing those services, including failing to have any required supervision of his practice and failing to have the proper credential to provide urine drug screen services while still performing such services. Respondent's contact with third party individuals regarding their ability to supervise him further indicates that Respondent was aware of the rules governing his credentials but was actively attempting to circumvent those rules.

Finally, Respondent's actual practice was below minimum standards. Respondent failed to maintain adequate progress notes, assessments, summaries, treatment plans, or placement documentation justifying his recommendations for level of care for multiple patients. Additionally, much of the documentation he did complete was insufficient and not appropriately thorough. Despite not complying with the rules regarding credentialing, supervision, and documentation, Respondent billed both patients and Wisconsin Medicaid for services he provided. In many cases, Respondent billed for outpatient mental health care services or intensive supervision services and then, knowing he was not properly credentialed and supervised to provide

such services, later lied to a DQA Health Services Specialist and claimed those patients only received "education services."

Respondent's conduct involved numerous serious ethical violations that deceived, defrauded, and harmed the public. Requiring Respondent to comply with the limitations proposed by the Division will best serve to promote Respondent's rehabilitation, protect the public, and deter others from engaging in such conduct. Health care consumers who suffer addictions are vulnerable and rely on the services of competent substance abuse treatment providers. The only way to assure the public that substance abuse counselors and clinical supervisors are minimally competent is through the credentialing process and enforcing the administrative rules relative to appropriate practice. In light of the facts of this case and based upon the factors set forth in *Aldrich*, I find that the discipline and suspension recommended by the Division, as well as the conditions and limitations of the Order section below, are warranted and appropriate.

Costs

The Division requests that Respondent be ordered to pay the full costs of this investigation and of these proceedings. The Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against the Respondent. See, Wis. Stat. § 440.22(2). Section 440.22(2) of the Wisconsin Statutes reads in part:

In any disciplinary proceeding against a holder of a credential in which the department or 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...

In exercising such discretion, the Department must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385.

In previous orders, Boards considered the following factors when determining if all or part of the costs should be assessed against the 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 prosecutor; (4) the respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and (7) any other relevant circumstances. See *In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, LS0802183CHI (Aug. 14, 2008). It is within the Board'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.

In this case, based upon the Respondent's default and failure to submit an Answer, the factual allegations contained in the Complaint were deemed admitted. Thus, the Division proved all counts alleged, which involved at least eight separate violations. Further, Respondent's conduct involved egregious ethical violations that deceived, defrauded, and harmed the public. This type of conduct is serious and erodes the public's trust in the substance abuse counseling and clinical supervision professions. The level of discipline sought by the Division is appropriate and warranted based on the facts of the case.

Another factor to consider in this case is that the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. As such, fairness weighs heavily in requiring Respondent to pay the costs of this proceeding which resulted in significant discipline, rather than spreading the costs among all Board licensees in Wisconsin. Accordingly, it is appropriate for Respondent to pay the full costs of the investigation and this proceeding, as determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

IT IS HEREBY ORDERED that:

1. The credential to practice as a substance abuse counselor in the state of Wisconsin issued to Respondent Daniel D. Cousins, Sr., A.P.S.W., C.S.A.C., C.S.-I.T., (credential no. 15605-132) is **SUSPENDED** for one (1) year from the date of this Order. After one (1) year, with proof of successful compliance with all of the terms of this Order, Respondent may petition the Department to terminate the suspension. Whether to terminate the suspension lies within the sole discretion of the Section.

2. The credential to practice as a clinical supervisor-in-training in the state of Wisconsin issued to Respondent Daniel D. Cousins, Sr., A.P.S.W., C.S.A.C., C.S.-I.T., (credential no. 15659-133) is **SUSPENDED** for one (1) year from the date of this Order. After one (1) year, with proof of successful compliance with all of the terms of this Order, Respondent may petition the Department to terminate the suspension. Whether to terminate the suspension lies within the sole discretion of the Section.

3. The credential of Respondent Daniel D. Cousins, Sr., A.P.S.W., C.S.A.C., C.S.-I.T., (credential number 15605-132), to practice as a substance abuse counselor in the state of Wisconsin and the credential (credential no. 15659-133) to practice as a clinical supervisor-in-training in the state of Wisconsin are **LIMITED** as follows:

- a. Within ninety (90) days of this Order, Respondent shall successfully complete three (3) hours of education on the subject of documentation in the practice of substance abuse counseling and clinical supervision and nine (9) hours of education on the subject of professional ethics in the practice of substance abuse counseling and clinical supervision. The course(s) must be pre-approved by the Department or its designee. Successful completion requires that Respondent take and pass any exam offered for the course(s).

Courses taken without preapproval may NOT be used to satisfy the education requirements of this Order. The Department or its designee may amend this limitation.

- b. Within thirty (30) days of completion of preapproved education, Respondent shall submit proof of successful completion in the form of verification from the institution or organization that provided the education.
- c. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Department.
- d. The Department shall remove this limitation from Respondent's license when Respondent has satisfied the Department or its designee that Respondent has successfully completed the preapproved education.

4. The credential of Respondent Daniel D. Cousins, Sr., A.P.S.W., C.S.A.C., C.S.-I.T., (credential number 15605-132), to practice as a substance abuse counselor in the state of Wisconsin and the credential (credential no. 15659-133) to practice as a clinical supervisor-in-training in the state of Wisconsin are LIMITED as follows:

- a. Respondent must comply with all the requirements of any Order entered in the DHA Case No. SPS-19-0055, DLSC Case Nos. 17 SOC 030 and 18 SOC 017.
- b. The Department shall remove this limitation from Respondent's credential when Respondent has petitioned the Department and has satisfied the Department or its designee that Respondent has successfully complied with the requirements of any Order entered in DHA Case No. SPS-19-0055, DLSC Case Nos. 17 SOC 030 and 18 SOC 017.

IT IS FURTHER ORDERED that Respondent Daniel D. Cousins, Sr., A.P.S.W., C.S.A.C., C.S.-I.T., shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18.

Request for approval of courses, proof of successful course completion and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent to the Department Monitor at the address below:

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

You may also submit this information online via DSPS' Monitoring Case Management System, here:

<https://app.wi.gov/DSPSMonitoring>

In the event that Respondent violates any term of this Order, the credential of Daniel D. Cousins, Sr., A.P.S.W., C.S.A.C., C.S.-I.T., (credential number 15605-132), to practice as a substance abuse counselor in the state of Wisconsin and the credential (credential no. 15659-133) to practice as a clinical supervisor-in-training in the state of Wisconsin may, in the discretion of the Department or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Department 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.

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

Dated at Madison, Wisconsin on 28th of January, 2020.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705
Tel. (608) 266-7709
Fax: (608) 264-9885

By: _____

Kristin P. Fredrick
Administrative Law Judge