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Before the
State Of Wisconsin
Psychology Examining Board

In the Matter of Disciplinary Proceedings Against
Kathryn L. LaPierre, Psy.D., Respondent

FINAL DECISION AND ORDER

Order No. ORDER 0006993

Division of Legal Services and Compliance Case No. 17 PSY 032

The State of Wisconsin, Psychology 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, Psychology 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 16th day of September, 2020.



Member

Psychology Examining Board

DSPS Chief Legal Counsel,

Delegatee



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Kathryn L. LaPierre, Psy.D., Respondent

DHA Case No. SPS-19-0053
DLSC Case No. 17 PSY 032

PROPOSED DECISION AND ORDER

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

Kathryn L. LaPierre

Ocean Springs, MS 39564

Wisconsin Psychology Examining Board
P.O. Box 8366
Madison, WI 53708-8366

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

Attorney Carley J. Peich Kiesling
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 25, 2019, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal complaint against Respondent Kathryn L. LaPierre, Psy.D., alleging that Respondent engaged in unprofessional conduct by engaging in any prohibited dual relationship or any relationship which is reasonably likely to impair the licensee's objectivity in providing professional services, in violation of Wis. Admin. Code § PSY 5.01(17); by failing to respond honestly and in a timely manner to a request for information from the board or with any other request for information by the board, in violation of Wis. Admin Code § PSY 5.01(24); and by

failing to timely notify the Department of a change of address, in violation of Wis. Stat. § 440.11(1).

The Division served Respondent on September 25, 2019, by sending a copy of the Notice of Hearing and Complaint to Respondent's address on file with the Department, via certified and regular mail, pursuant to Wis. Admin. Code § SPS 2.08. Respondent was given 20 days from the date of service to file an Answer. No Answer was filed.

At the expiration of the 20-day time period to file an Answer, Administrative Law Judge (ALJ) Sally Pederson scheduled a telephone prehearing conference for October 22, 2019. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which Respondent could be reached for the conference. Respondent failed to provide a telephone number but did participate in the hearing conference, during which she claimed she had not received the Notice of Hearing and Complaint from the Division or the Notice of the prehearing conference from the ALJ. The ALJ scheduled another telephone prehearing conference for October 24, 2019.

On October 24, 2019, both parties participated in the prehearing telephone conference. Respondent failed to file an Answer to the Complaint within 20 days from the date of service, and Attorney Peich Kiesling, on behalf of the Division, moved for default based upon Respondent's failure to timely file an Answer, in accordance with Wis. Admin. Code § SPS 2.14. Respondent requested an extension of the 20-day deadline to file an Answer. The ALJ denied the Division's motion and granted Respondent's request, extended the deadline for Respondent to file an Answer to November 6, 2019 and scheduled another prehearing conference for November 22, 2019. Respondent filed an Answer on November 6, 2019.

On November 18, 2019, the Division requested that the prehearing conference scheduled for November 22, 2019, be cancelled to allow the parties time to negotiate a settlement. Accordingly, the ALJ cancelled the prehearing conference.

On January 16, 2020, the Division requested that the ALJ schedule another telephone prehearing conference because Attorney Peich Kiesling had been unable to reach Respondent and had not heard back from Respondent regarding a proposed settlement. On January 17, 2020, the ALJ sent the parties, via electronic mail, notice of a telephone prehearing conference scheduled for January 28, 2020.

On January 28, 2020, the parties were advised that the ALJ was out of the office unexpectedly and would reschedule the prehearing conference. On January 30, 2020, the ALJ sent the parties, by electronic mail, notice that the telephone prehearing conference was rescheduled to February 3, 2020, at 10:30 a.m.

On February 3, 2020, Respondent did not answer the telephone when called by the ALJ for the telephone prehearing conference at 10:30 a.m. The ALJ left a voice mail message for

Respondent informing her to call the ALJ by 10:48 a.m., that the prehearing conference would be reconvened without her if she did not call back, and that her non-appearance could result in a finding of default against Respondent. Respondent did not call the ALJ back as directed, and the ALJ reconvened the telephone prehearing conference with the Division at 10:49 a.m. The Division moved for default based on Respondent's failure to appear, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(b).

On February 3, 2020, based on Respondent's failure to appear at the prehearing conference, the ALJ found Respondent in default and issued a Notice of Default and Order, which ordered the Division to file a recommended proposed decision and order by March 2, 2020. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-3 are taken from the Division's Complaint in this matter¹.

1. Respondent Kathryn L. LaPierre is licensed in the State of Wisconsin to practice psychology, having license number 2666-57, first issued on March 16, 2007, and current through September 30, 2021.
2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is _____, Ocean Springs, Mississippi 39564.
3. Respondent failed to respond to the Department on numerous occasions as follows:
 - a. On November 10, 2017, the Department sent Respondent a letter at the most recent address on file with the Department at the time (_____, N206, Mequon, Wisconsin 53092), requesting a response to the allegations and Client A's records by November 24, 2017. The Department did not receive a response by November 24, 2017.
 - b. On December 7, 2017, the Department received a phone call from Respondent's attorney requesting an extension to December 21, 2017, to provide a response and records. The extension was granted.
 - c. On December 20, 2017, the Department received an email from Respondent's attorney requesting another extension of one week for a response and records.

¹ The Division's Complaint contained factual allegations 1-10. However, based on Respondent's subsequent Answer and other information provided to the Division after the filing of the Complaint, the Division is no longer pursuing allegations 3-9 set forth in the Complaint. Findings of Fact 1-2 above are taken from paragraphs 1-2 of the Complaint, and Finding of Fact 3 above is taken from paragraph 10 of the Complaint.

The Department did not receive a response from either Respondent or her attorney.

- d. On April 12, 2018, the Department sent an email to Respondent's attorney regarding the prior request for a response to the allegations and Client A's records. The attorney replied that he no longer represented Respondent in this matter and was unable to provide updated contact information for Respondent.
- e. On April 12, 2018, the Department sent an email to Respondent at her last known email address on file with the Department () requesting a response and records for Client A, and also requesting that Respondent provide the Department with updated contact information. The Department did not receive a response.
- f. On November 9, 2018, the Department located Respondent's LinkedIn profile on the internet which indicated that she worked as a Director of Behavioral Health in Ewa Beach, Hawaii. The Department also learned that Respondent holds a license to practice psychology in the State of Hawaii.
- g. On May 6, 2019, the Department sent a letter to Respondent at , Waipahu, Hawaii 96797-1434, requesting a response by May 11, 2019. The letter was returned as undeliverable.
- h. On May 16, 2019, the Department sent a letter via certified mail to Respondent at , Ewa Beach, Hawaii 96706, requesting a response by June 3, 2019. The letter was signed for by an "agent" on May 20, 2019. The Department did not receive a response.
- i. On July 2, 2019, the Department sent a letter via certified mail to Respondent at the most recent address on file with the Department at the time (, Mequon, Wisconsin 53092). The letter was returned undeliverable with a forwarding address of : Kaunakakai, Hawaii 96748-6012.
- j. On July 24, 2019, the Department sent a letter via certified mail to Respondent at , Kaunakakai, Hawaii 96748-6012, requesting a response by August 7, 2019. On August 1, 2019, United States Postal Service certified tracking information indicated "addressee unknown". The Department did not receive a response.

Facts Related to Default

4. The Notice of Hearing and Complaint were served on Respondent on September 25, 2019, by both certified and first-class mail. 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 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."

5. Respondent failed to file an Answer to the Complaint within 20 days.
6. At the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for October 22, 2019. Respondent failed to provide a telephone number but did participate in the prehearing conference, during which she claimed she had not received the Notice of Hearing and Complaint from the Division, or the Notice of Prehearing Conference from the ALJ. The ALJ scheduled another telephone prehearing conference for October 24, 2019.
7. On October 24, 2019, both parties participated in the prehearing conference. Attorney Peich Kiesling, on behalf of the Division, moved for default based upon Respondent's failure to timely file an Answer, in accordance with Wis. Admin. Code § SPS 2.14. Respondent requested an extension of the 20-day deadline to file an Answer. The ALJ denied the Division's motion, granted Respondent's request, and extended the deadline for Respondent to file an Answer to November 6, 2019, and scheduled another prehearing conference for November 22, 2019. Respondent filed an Answer on November 6, 2019.
8. On November 18, 2019, the Division requested that the prehearing conference scheduled for November 22, 2019, be cancelled to allow the parties time to negotiate a settlement in this matter. Accordingly, the ALJ cancelled the prehearing conference.
9. On January 16, 2020, the Division requested that the ALJ schedule another telephone prehearing conference because Attorney Peich Kiesling had been unable to reach Respondent and had not heard back from Respondent regarding a proposed settlement. On January 17, 2020, the ALJ sent the parties, via electronic mail, notice of a telephone prehearing conference scheduled for January 28, 2020.
10. Because the ALJ was unexpectedly out of the office on January 28, 2020, the ALJ sent the parties notice by electronic mail on January 30, 2020 that the telephone prehearing conference was rescheduled to February 3, 2020 at 10:30 a.m.
11. On February 3, 2020, Respondent did not answer the telephone when called by the ALJ for the telephone prehearing conference at 10:30 a.m. The ALJ left a voice mail message for Respondent informing her to call the ALJ by 10:48 a.m., that the prehearing conference would be reconvened without her if she did not call back, and that her non-appearance could result in a finding of default against Respondent. Respondent did not call the ALJ back as directed, and the ALJ reconvened the telephone prehearing conference with the Division at 10:49 a.m. The Division moved for default based on Respondent's failure to appear.
12. On February 3, 2020, the ALJ found Respondent in default and issued a Notice of Default and Order, based on Respondent's failure to appear at the prehearing conference, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(b).

13. On February 3, 2020, the ALJ ordered that the Division file a recommended proposed decision and order by March 2, 2020.

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

DISCUSSION AND CONCLUSIONS OF LAW

Jurisdictional Authority

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

Default

As stated in the February 3, 2020, Notice of Default and Order, Respondent is in default for failing to appear the prehearing conference on February 3, 2020. *See* Wis. Admin. Code § SPS 2.14. *See also* Wis. Admin. Code HA 1.07(3)(b) and (c). Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14.

Violations

Pursuant to Wis. Stat. § 455.09(1)(g), the Wisconsin Psychology Examining Board (Board) possesses the authority to discipline a licensee or license holder for violating ch. 455 or any rule of professional conduct promulgated under ch. 455. Respondent violated Wis. Admin. Code § PSY 5.01(24) by failing to respond in a timely manner to the Board's requests. By failing to update her address as required by Wis. Stat. § 440.11(1), Respondent also violated Wis. Admin. Code § PSY 5.01(5), by violating a law the circumstances of which substantially relate to the practice of psychology.

The undisputed facts in this matter as set forth in the Complaint are as follows:²

On numerous occasions, Respondent failed to respond to the Department's attempts to obtain a response to a complaint from a former client and its attempts to obtain that client's records. The Department's initial attempt to obtain a response and records was on November 10, 2017, to which Respondent did not timely respond. On December 7, 2017, an attorney representing Respondent contacted the Department and requested an extension to provide a response and records, which was granted. On December 20, 2017, Respondent's attorney contacted the Department and requested another extension. However, the Department never received a response from Respondent or her attorney.

On April 12, 2018, the Department sent an email to Respondent's attorney regarding the prior request for a response to the allegations and records. The attorney replied that he no longer represented Respondent in this matter and was unable to provide updated contact information for Respondent.

² As noted in Footnote 1 above, only allegations 1-2 and 10 of the Complaint are included herein.

On April 12, 2018, the Department sent an email to Respondent at her last known email address on file with the Department (kathylapierre@yahoo.com) requesting a response and records and also requesting that Respondent provide the Department with updated contact information. The Department never received a response.

On November 9, 2018, the Department located Respondent's LinkedIn profile on the internet which indicated that she worked as a Director of Behavioral Health in Ewa Beach, Hawaii. On May 6, 2019, the Department sent a letter to Respondent at 94-214 Waipahu Street, Waipahu, Hawaii 96797-1434, requesting a response by May 11, 2019. The letter was returned as undeliverable.

On May 16, 2019, the Department sent a letter via certified mail to Respondent at 91-2301 Old Fort Weaver Road, Ewa Beach, Hawaii 96706, requesting a response by June 3, 2019. The letter was signed for by an "agent" on May 20, 2019. The Department did not receive a response.

On July 2, 2019, the Department sent a letter via certified mail to Respondent at the most recent address on file with the Department at the time (11295 North Cedarburg Road N206, Mequon, Wisconsin 53092). The letter was returned undeliverable with a forwarding address of 9509 Kamehameha V Highway, Kaunakakai, Hawaii 96748-6012.

On July 24, 2019, the Department sent a letter via certified mail to Respondent at 9509 Kamehameha V Highway, Kaunakakai, Hawaii 96748-6012, requesting a response by August 7, 2019. On August 1, 2019, United States Postal Service Certified tracking information indicated "addressee unknown". The Department did not receive a response.

By failing to respond honestly and in a timely manner to a request for information by the Board, Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code § PSY 5.01(24). By failing to update her address as required by Wis. Stat. § 440.11(1), Respondent also engaged in unprofessional conduct as defined by Wis. Admin. Code § PSY 5.01(5). Respondent's conduct violated the law in that the circumstances of substantially related to the practice of psychology.³

As a result of the conduct described above, Respondent is subject to discipline pursuant to Wis. Stat. § 455.09(1)(g).

Appropriate Discipline

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

³ As noted in Footnote 1 above, the Division is no longer pursuing the allegation in the Complaint that Respondent engaged in unprofessional conduct by engaging in any prohibited dual relationship or any relationship which is reasonably likely to impair the licensee's objectivity in providing professional services.

the moral fitness and professional competency of those who hold a professional license. *See State v. MacIntyre*, 41 Wis. 2d 481, 484, 164 N.W.2d 235 (1969). "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).

The Division requests that Respondent be reprimanded for her failure to respond in a timely manner to the Board and her failure to notify the Department of her changed address. The requested discipline is consistent with the goals articulated in *Aldrich* and *MacIntyre*, and precedent from other Boards.

When a license is granted to an individual, the Board is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). When a complaint is received about a licensed individual, the Board is responsible for investigating that complaint in order to assess the license holder's competence and other violations of statutes and codes. In the present case, the Board was attempting to do just that – obtain a response from Respondent to allegations from a former client, as well as that client's records, so that it could assess Respondent's competency. However, Respondent impeded the Board's ability to do this by repeatedly ignoring its requests for information and records and by failing to update the Department when her address changed. The Board cannot protect the public if license holders simply ignore their responsibility to cooperate with the Board as the Respondent did here.

Respondent's refusal to cooperate with the Board constitutes serious misconduct. Respondent's lack of cooperation shows disregard for the Board's authority and impedes the Board's ability to thoroughly investigate allegations of misconduct. A reprimand is necessary to rehabilitate the Respondent, as well as to deter other licensees from engaging in similar conduct.

It is appropriate for the Psychology Examining Board to look at the Board of Nursing for precedent regarding imposing discipline on a licensee for engaging in violations similar to Respondent's, in that the Board of Nursing has a duty to the public akin to that of the Psychology Examining Board. In imposing discipline, the Board of Nursing relied on the same reasoning as set forth herein. *See In the Matter of Disciplinary Proceedings Against Tracy J. Burtis, R.N.*, Order Number 0005364 (July 13, 2017) (registered nurse who failed to respond to Board inquiries and requests, failed to file an Answer, and failed to appear at a prehearing conference, was reprimanded, required to complete four credits of education on the topic of nurse practice acts, and required to provide work reports and work under supervision for two years).⁴

Based upon the facts of this case and the factors set forth in *Aldrich*, I find the provisions of the Order section below are warranted.

Costs

The Board 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 Board must look at aggravating and mitigating facts of the case; it may not assess costs

⁴ This Order can be found online at <https://online.drl.wi.gov/decisions/2017/ORDER0005364-00013889.pdf>.

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. *Noesenv. 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.

Here, in light of the factors described above and the facts of this case, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings. Respondent defaulted, and the factual allegations were deemed admitted. Thus, the Division met its burden of proof. There is no argument to indicate that litigation was not necessary. To the contrary, all costs incurred by the Division, including all litigation, was necessary in order to achieve even a minimal response from the Respondent. Respondent failed to cooperate with the Board's investigation and disciplinary process and has not offered any acceptable justification for her actions in this regard. Respondent's conduct was serious in nature and shows a blatant disregard of the law and rules governing her license. Lastly, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. As such, fairness weighs in favor of requiring Respondent to pay the costs of this proceeding 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 in accordance with Wis. Admin. Code § SPS 2.18.

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that Respondent Kathryn L. LaPierre, who is licensed (license number 2666-57) to practice psychology in the State of Wisconsin, is REPRIMANDED.

IT IS FURTHER ORDERED that Respondent pay all recoverable costs in this matter in an amount to be established in accordance with 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 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

The information may also be submitted online via DSPS' Monitoring Case Management System at:

<https://DSPSmonitoring.wi.gov>

IT IS FURTHER ORDERED that, in the event Respondent violates any term of this Order, Respondent's license (2666-57), or Respondent's right to renew her license, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board 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 the Order are effective the date the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin on 17th of April, 2020.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By:


Sally Pederson

Senior Administrative Law Judge