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**Before the
State of Wisconsin
Department of Safety and Professional Services**

In the Matter of the Disciplinary Proceedings
Against Orlesia G. Gooseberry-Bell, S.W.,
C.S.A.C., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0007404**

Division of Legal Services and Compliance Case No. 18 RSA 041


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

ORDER

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

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

Dated at Madison, Wisconsin on the 2nd day of June, 2021.



Member 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
Orlesia G. Gooseberry-Bell, S.W., C.S.A.C.,
Respondent.

DHA Case No. SPS-21-0003
DLSC Case No. 18 RSA 041

PROPOSED DECISION AND ORDER

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

Orlesia G. Gooseberry-Bell, S.W., C.S.A.C.
PO Box 06055
Milwaukee, WI 53206

Wisconsin Department of Safety and Professional Services
P.O. Box 8368
Madison, WI 53707-8368

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

Attorney Alicia M. Kennedy
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

On January 13, 2021, the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal complaint against Respondent Orlesia G. Gooseberry-Bell, S.W., C.S.A.C., alleging that Respondent engaged in unprofessional conduct. As grounds for taking disciplinary action against the Respondent's credentials the complaint alleged the following: (1) Respondent violated Wis. Admin. Code § SPS 164.01(2)(b) by violating, or aiding and abetting a violation of, any law or rule substantially related to practice as a substance abuse professional; and (2) Respondent violated Wis. Stat. § 440.03(13)(am) by failing to send a notice of a conviction by First Class Mail to the Department within 48 hours after the entry of the judgment of conviction. Administrative Law Judge Kristin Fredrick (ALJ) was assigned to the matter.

The Notice of Hearing and the Complaint (Notice and Complaint) in this matter were served on Respondent by the Division on January 13, 2021. The Notice and Complaint were sent by both Certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08, to the address on file with the Department. An Answer to a Complaint was to be filed within 20 days from the date of service of the Complaint. Wis. Admin. Code § SPS 2.09(4). No Answer has been filed.

Following expiration of the 20-day time period to file an Answer, the undersigned ALJ scheduled a telephone prehearing conference for Wednesday, February 17, 2021, at 10:00 am. The Respondent contacted the ALJ to provide a telephone number where she could be reached for the February 17, 2021 prehearing. During the prehearing conference, Respondent stated that she did file an Answer despite neither the ALJ nor the Division having received a copy.

On February 18, 2021, the ALJ issued a Prehearing Conference Report and Scheduling Order. The Order required Respondent to submit a written answer to the Complaint on or before March 9, 2021 and included instructions on how to file the Answer. The Respondent failed to file a written answer by March 9, 2021. Therefore, on March 15, 2021, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3) based on Respondent's failure to file an Answer and failure to comply with the Scheduling Order. The ALJ sent an email to Respondent requesting a response by the end of business on March 15, 2021. Respondent failed to respond.

Based upon Respondent's failure to file an Answer and failure to comply with the Scheduling Order, the ALJ granted the Division's motion for default and found Respondent in default. On March 17, 2021, the ALJ issued a Notice of Default against Respondent and ordered that the Division file a recommended proposed decision and order by April 15, 2021. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

1. Respondent Orlesia G. Gooseberry-Bell, S.W., C.S.A.C., (DOB July 23, 1965) is certified in the state of Wisconsin practice clinical substance abuse counseling, having certificate number 15709-132, first issued on August 24, 2012, and current through February 28, 2021.^{1 2} Respondent's most recent mailing address on file with the Wisconsin Department of Safety and Professional Services (Department) is Post Office Box 06055, Milwaukee, Wisconsin 53206. Respondent's most recent physical address on file with the Department is Milwaukee, Wisconsin 53225. (Division Complaint 18 RSA 041 dated 1/13/21, ¶ 1)

2. On August 20, 2014, Respondent was convicted in Milwaukee County Circuit Court case number 2013CF646 of one (1) count of battery, a class A misdemeanor, and two (2) counts

¹ Respondent is also certified in the state of Wisconsin to practice social work, having certificate number 10901-120, first issued on August 5, 2011, and expired on February 28, 2021.

² Since the filing of the Complaint, Respondent's credential has expired. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew upon payment of a fee until February 27, 2026.

of disorderly conduct, a class B misdemeanor. The convictions stemmed from Respondent's admission to spanking her grandchildren with a belt. (Complaint, ¶ 2)

3. The Department was not notified of this conviction until Respondent applied for a clinical supervisor-in training credential with the Department on April 16, 2018. (Complaint, ¶ 3)

Facts Related to Default

4. The Notice of Hearing and the Complaint (Notice and Complaint) in this matter were served on Respondent by the Division on January 13, 2021. The Notice and Complaint were sent by both Certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08, to both addresses address on file with the Department.

5. The Notice 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."

6. An Answer to a Complaint was to be filed within 20 days from the date of service of the Complaint. Wis. Admin. Code § SPS 2.09(4). No Answer had been filed.

7. Following expiration of the 20-day time period to file an Answer, the undersigned ALJ scheduled a telephone prehearing conference for Wednesday, February 17, 2021, at 10:00 am. Notice of the 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 no later than February 16, 2021. Respondent did provide a telephone number.

8. On February 17, 2021, the ALJ contacted both parties and held the prehearing conference. During the prehearing conference, Respondent stated that she did file an answer; however, neither the ALJ nor the Division received a copy of the Respondent's alleged answer. Therefore, the Respondent was instructed to resubmit her answer to both the ALJ and the Division.

9. On February 18, 2021, the ALJ issued a Prehearing Conference Report and Scheduling Order. The Scheduling Order required Respondent to submit a written answer to the Complaint on or before March 9, 2021 and included instructions on how to file the Answer.

10. On March 15, 2021, the Division moved for default based on Respondent's failure to file an Answer and failure to comply with the Scheduling Order, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3). The ALJ sent an email to Respondent requesting a response by the end of business on March 15, 2021. The Respondent failed to reply to the email.

11. Based upon Respondent's failure to file an Answer and failure to comply with the Scheduling Order, the ALJ granted the Division's motion and found Respondent in default.

12. On March 17, 2021, the ALJ issued a Notice of Default against Respondent and ordered that the Division file a recommended proposed decision and order by April 15, 2021. The Division timely filed its submission.

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

DISCUSSION

Jurisdictional Authority

The Wisconsin Department of Safety and Professional Services (Department) has jurisdiction over this matter pursuant to Wis. Stat. § 440.88(6). 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 in Wis. Admin. Code ch. SPS 2.

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

The Division properly served the Notice and Complaint upon Respondent by mailing copies to her at her last known address. Service by mail is complete upon mailing. Wis. Admin. Code § SPS 2.08(1). Pursuant to Wis. Admin. Code § SPS 2.14, if a respondent “fails to answer as required by s. SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence.” *See also* Wis. Admin. Code § HA 1.07(3)(c).

Respondent violated Wis. Admin. Code § SPS 2.09(4) by failing to file an Answer to the Complaint within 20 days from the date of service. Respondent appeared at the prehearing telephone conference on February 17, 2021, whereupon she asserted she did file an Answer; however, neither the ALJ nor the Division received a copy. The ALJ extended the deadline to file an Answer to March 9, 2021. Respondent failed to file her Answer by the extended deadline. Therefore, Respondent is in default, findings may be made, and an order may be entered on the basis of the Complaint.

Violations

The Department has the authority to impose discipline against the Respondent following an investigation and disciplinary hearing if the Department determines that a credential holder has “engaged in unprofessional conduct.” Wis. Stat. § 440.88(6). Wisconsin Admin. Code § SPS 164.01(2) sets forth rules promulgated by the Department related to unprofessional conduct.

The Division alleges that the Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code § SPS 164.01(2)(b), by violating a law of any jurisdiction, the circumstances of which substantially relate to the practice under the credential. Further, the Division alleges that the Respondent violated Wis. Stat. § 440.03(13)(am), by failing to send notice of a conviction by 1st class mail to the Department within 48 hours after the entry of the judgment of conviction.

On August 20, 2014, Respondent was convicted in Milwaukee County Circuit Court case number 2013CF646 of one (1) count of battery, a class A misdemeanor, and two (2) counts of disorderly conduct, a class B misdemeanor. The convictions stemmed from Respondent's admission to spanking her grandchildren with a belt. By failing to file an answer, the Respondent is not contesting the Division's allegations against her and thus, the assertion that the Respondent's actions are substantially related to her substance abuse counseling practice will be accepted as true. Regardless, the Respondent did not send notice of the conviction to the Department within 48 hours after entry of the judgment of conviction as required by Wis. Stat. § 440.03(13)(am). Instead, the Department was not notified of this conviction until Respondent applied for a clinical supervisor-in-training credential with the Department on April 16, 2018. As a result of the violations, the Respondent is subject to discipline pursuant to Wis. Stat. § 440.88(6) and Wis. Stat. § 440.03(13)(am) and Wis. Admin. Code § SPS 164.01(2)(b).

Discipline

The three purposes of discipline in a professional misconduct case 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, 209, 237 N.W.2d 689 (1976).

The Division recommends that Respondent's right to renew her credential be subject to an indefinite suspension and with the ability to stay the suspension after completing a fitness to practice examination.

The recommended discipline is consistent with the purposes articulated in *Aldrich*. Although promoting rehabilitation is one of the purposes of discipline, rehabilitation remains unknown in this case. Respondent failed to report her battery and disorderly conduct convictions to the Department. Additionally, Respondent's convictions are the result of her spanking her grandchildren with a belt. The Division's recommendation will ensure the health, safety, and welfare of the public by confirming whether Respondent is safe to practice with a vulnerable group of people. If so, she will be able to petition the Department to stay the suspension so she can return to practice, while still being monitored for safety. Finally, having received no Answer from Respondent following the Notice and Complaint, the Department cannot determine whether any rehabilitative measures would be effective.

"Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a license is granted to an individual, Wisconsin is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the state cannot assure the public of the licensee's competence to practice

the profession, then suspension is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984). The Division alleges that the Respondent's decision to spank her grandchildren with a belt put them in danger; and as the authority figure, gave Respondent power over them. Moreover, the Respondent's failure to report her subsequent conviction related to that conduct prevented the Department from taking action to evaluate the need to ensure the protection of the public. The Department cannot assure the public that an individual is neither competent nor safe to practice. Not only are a suspension and limitations on Respondent's right to renew her credential necessary to protect the public from other instances of misconduct, but the Department also cannot ensure that Respondent will practice her profession safely without limitations.

Suspension and limitations on Respondent's right to renew her credential are also necessary to deter other credential holders from engaging in similar conduct. The suspension and limitations will serve to deter others from engaging in similar conduct.

In light of the facts of this case, and the factors set forth in *Aldrich*, it is appropriate to suspend and place limitations on Respondent's right to renew her credential to practice as a clinical substance abuse counselor in Wisconsin, as set forth in the Order section below.

Costs

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

Considering the above factors, it is appropriate for Respondent to pay the full costs of the investigation and prosecution of these proceedings. Respondent defaulted and the factual allegations identified in this decision were deemed admitted. Finally, Respondent failed to file an Answer to the Complaint, or otherwise provide any argument regarding the allegations brought against her. Lastly, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. It would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Therefore, 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

For the reasons set forth above, IT IS ORDERED that the right to renew the certificate to practice as a clinical substance abuse counselor in the state of Wisconsin issued to Respondent, Certificate No. 15709-132, is SUSPENDED as follows:

SUSPENSION

- A.1. The right to renew the certificate of Respondent to practice as a clinical substance abuse counselor in the state of Wisconsin is SUSPENDED for an indefinite period.

REMOVAL OF SUSPENSION

- B.1. The suspension of right to renew Respondent's Wisconsin clinical substance abuse counselor certificate may be removed upon Respondent petitioning the Department and providing proof, which is determined by the Department or its designee to be sufficient, that Respondent completed a Fitness to Practice evaluation within the 30 days prior to Respondent's petition and according to the terms of paragraphs C.1.-C.8.

FITNESS TO PRACTICE

- C.1. Respondent shall, at her own expense, undergo a fitness for practice evaluation with a pre-approved psychiatrist or psychologist (Evaluator) who has not provided treatment to Respondent and is experienced in evaluating whether a health care professional is fit to practice.
- C.2. Prior to evaluation, Respondent shall provide a copy of this Final Decision and Order to the Evaluator.
- C.3. Respondent shall identify and provide the Evaluator with authorizations to communicate with all physicians, mental health professionals, and facilities at which Respondent has been treated or evaluated.
- C.4. Within fifteen (15) days of the completion of the evaluation, a written report regarding the results of the assessment shall be submitted to the Department Monitor at the address below. The report shall address whether Respondent suffers from any condition(s) that may interfere with her ability to practice safely and competently and, if so, shall provide any recommended limitations for safe and competent practice.
- C.5. Respondent shall execute necessary documents authorizing the Division to obtain records of the evaluation, and to discuss Respondent and her case with the Evaluator. Respondent shall execute all releases necessary to permit disclosure of the final evaluation report to the

Department or its designee. Certified copies of the final evaluation report shall be admissible in any future proceeding before the Department.

- C.6. If the Evaluator determines that Respondent is not fit to practice or is fit for practice with limitations, the Department or its designee may deny the stay of suspension until Respondent provides proof sufficient to convince the Department or its designee that Respondent is able to practice with reasonable skill and safety of patients and the public and does not suffer from any condition which prevents Respondent from practicing in that manner.
- C.7. If the Evaluator determines that Respondent is fit to practice or is fit to practice with limitations, the Department or its designee may limit Respondent's certificate in a manner to address any concerns the Department or its designee has as a result of the conduct set out in the Findings of Fact and to address any recommendations resulting from the evaluation, including, but not limited to:
- i. Psychotherapy, at Respondent's expense, by a therapist approved by the Department or its designee, to address specific treatment goals, with quarterly reports to the Department by the therapist.
 - ii. Additional professional education in any identified areas of deficiency.
 - iii. Restrictions on the nature of practice, practice setting, or requirements for supervision of practice by a professional approved by the Department, with periodic reports to the Department by the supervisor.
- C.8. Respondent is responsible for ensuring that the results of the evaluation are sent to the Department Monitor.

MISCELLANEOUS

- D.1. Any requests, petitions, reports, payment of costs (made payable to Department of Safety and Professional Services), and other information required by this Order shall be submitted 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

Respondent may also submit this information online at: <https://dpsmonitoring.wi.gov>

IT IS FURTHER ORDERED that Respondent 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 using the contact information in paragraph D.1.

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 Department.

Dated at Madison, Wisconsin, on this 28th day of April, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Kristin P. Fredrick
Administrative Law Judge