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**Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

In the Matter of the Disciplinary Proceedings
Against Ryan Sullivan, Respondent

FINAL DECISION AND ORDER

ORDER 0007623

Order No. _____

Division of Legal Services and Compliance Case No. 18 RSG 017

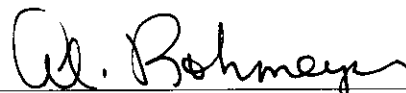
The State of Wisconsin, Department of Safety and Professional Services, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 12th day of October, 2021.



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 Ryan Sullivan, Respondent

DHA Case No. SPS-21-0047
DLSC Case No. 18 RSG 017

PROPOSED DECISION AND ORDER

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

Ryan Sullivan
1500 Sleepy Hollow Dr.
Richfield, WI 53076

Department of Safety and Professional Services
P.O. Box 8368
Madison, WI 53708-8368

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

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

PROCEDURAL HISTORY

The Notice of Hearing and the Complaint in this matter were served on Ryan Sullivan (Respondent) by the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), on June 2, 2021, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. Respondent failed to file an answer to the Complaint within 20 days from the date of service, as required by Wis. Admin. Code § SPS 2.09(4).

Following the expiration of the 20- day period to file an answer, Administrative Law Judge Andrea Brauer scheduled a telephone conference for July 29, 2021, at 1:00 pm. Notice of this prehearing conference was sent to both parties. Respondent failed to appear for the prehearing conference.

Based on the Respondent's failure to file an answer to the Complaint and failure to appear at the prehearing conference, the Division moved for a finding that the Respondent was in default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

On August 2, 2021, the ALJ issued a Notice of Default against the Respondent and ordered the Division to file a recommended proposed decision and order by August 20, 2021.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1–5 are taken from the Division's Complaint against Respondent filed in this matter.

1. The Respondent, Ryan Sullivan, is permitted by the State of Wisconsin to practice as a private security person, having permit number 36977-108, first issued on September 26, 2008, and current through August 31, 2022.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Richfield, Wisconsin 53076.

3. On August 7, 2017, Respondent pled guilty to Disorderly Conduct, a misdemeanor, in Washington County Circuit Court (Case No. 2017 CM 742) and was ordered to pay a fine and court costs totaling \$579.00.

4. On August 31, 2018, Respondent reported his conviction to the Department when he renewed his private security person permit.

5. According to the criminal complaint in Case No. 17 CM 742, on May 13, 2017, Respondent was a passenger on a motorcycle when a driver in another car attempted to pass the motorcycle. The motorcycle accelerated so as to not let the car pass. Later, the motorcycle stopped in front of the car abruptly and the driver of the motorcycle yelled at the passengers of the car while Respondent allegedly flipped them off and put one hand on his gun, which was holstered at his waist. He then allegedly made a gesture with his other hand imitating shooting a gun.

Facts Related to Default

6. On June 2, 2021, the Division served the Notice of Hearing and the Complaint on Respondent at his address on file with the Department by both certified and regular mail.

7. Respondent failed to file an answer to the Complaint.

8. Following the expiration of the 20-day period to file an answer, Administrative Law Judge Andrea Brauer scheduled a telephone prehearing conference for July 29, 2021. The ALJ

sent notice of this conference to all parties, with instructions that Respondent provide to the ALJ a telephone number at which he could be reached for the conference no later than July 28, 2021. The notice also stated: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."

9. Respondent failed to provide a telephone number at which he could be reached for the prehearing conference.

10. On July 29, 2021, Respondent failed to appear at the prehearing conference. The ALJ attempted to reach Respondent at the telephone number that the Department had on file for him. The ALJ called the Respondent at that number two times and in the second call left a voicemail for Respondent indicating that Respondent should contact the ALJ at the telephone number provided, failing which the ALJ would proceed with the conference without Respondent.

11. Respondent failed to contact the ALJ at the telephone number provided.

12. On July 29, 2021, the Division moved for a finding that the Respondent was in default based on his failure to file an answer to the Complaint and failure to appear at the prehearing telephone conference, pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

13. On August 2, 2021, the ALJ issued a Notice of Default against Respondent and ordered the Division to file a recommended proposed decision and order by August 20, 2021.

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

DISCUSSION

Jurisdictional Authority

The Department has the authority to impose discipline against the Respondent's permit. Wis. Stat. § 440.26. The undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1). Wis. Admin. Code § SPS 2.10(2).

Default

The Division properly served the Notice and Complaint upon Respondent by mailing a copy to his address on record with the Department. Service by mail is complete upon mailing. Wis. Admin. Code § SPS 2.08(1). Under 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."

Here, Respondent failed to file an answer to the Complaint, failed to appear at the prehearing telephone conference on July 29, 2021, and failed to provide a telephone number to

the ALJ after it had been requested. Therefore, the Respondent is in default, and findings may be made, and an order may be entered, based on the Complaint.

Violations

The Department may reprimand the holder of a permit or revoke, suspend, or limit the permit of a private security person for unprofessional conduct. Wis. Admin. Code § SPS 35.02 and Wis. Stat. § 440.26(6). Conduct that is grounds for the Department to take disciplinary action includes, but is not limited to:

- a. Conviction of a misdemeanor or violation of any state or local law that is punishable by a forfeiture. Wis. Stat. § 440.26(6)(a)1.
- b. Violation of any law which substantially relates to the practice of a private security person. Wis. Admin. Code § SPS 35.01(2).
- c. Engaging in conduct reflecting adversely on the professional qualification. Wis. Stat. § 440.26(6)(a)2 and Wis. Admin. Code § SPS 35.01(2).
- d. Failure to notify the Department in writing of the date, place, and nature of a conviction within 48 hours after the entry of the judgment of conviction. Wis. Stat. § 440.26(6)(a)4 and Wis. Admin. Code § SPS 35.01(2).

On August 7, 2017, Respondent was convicted of Disorderly Conduct, a misdemeanor, in the State of Wisconsin, Washington County Circuit Court, Case No. 2017 CM 742. The circumstances surrounding this conviction substantially relate to Respondent's practice as a private security person because Respondent, while a passenger on a motorcycle, engaged in obscene and threatening behavior toward another person. Private security persons frequently engage with members of the public, and they are often charged with patrolling in vehicles and must do so lawfully and peacefully. The criminal complaint in that matter further states that Respondent touched a gun he had holstered at his waist and then, with his other hand, made a gesture resembling shooting a gun. Private security persons may be required to handle firearms, and they must do so in a legally responsible manner. Respondent showed that he would use a firearm to intimidate, rather than protect, members of the public. This behavior would likely be of great concern to potential employers and to the Wisconsin citizens Respondent is charged to protect.

The Department has previously found convictions for disorderly conduct substantially related to the practice of a private security person for the purpose of imposing discipline. *In the Matter of the Disciplinary Proceedings Against Nicholas W. Bonner*, ORDER0004336 (Nov. 10, 2015); *In the Matter of the Disciplinary Proceedings Against Andrea M. Murphy-Brooks*, ORDER0003609 (Dec. 29, 2014); *In the Matter of the Disciplinary Proceedings Against Todd Edmonds*, ORDER0002317 (Feb. 26, 2013); *In the Matter of Disciplinary Proceedings Against Ware A. Burnette*, ORDER0001961 (Aug. 7, 2012); *In the Matter of Disciplinary Proceedings Against Kevin M. Berg*, ORDER0001529 (May 9, 2012).

Respondent failed to notify the Department within 48 hours of the entry of the judgment of conviction against him. Wisconsin Stat. § 440.26(4m)(b) requires the holder of a license or permit who is found to have committed a misdemeanor to "notify the department in writing of

the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction or the judgment finding that the person committed the violation.” *See also* Wis. Admin. Code § SPS 35.01(2). Respondent’s failure to notify the Department within 48 hours of the entry of the judgment of conviction constitutes a violation of Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS 35.01(2).

By engaging in conduct qualifying as grounds for taking disciplinary action on his permit, along with Respondent’s failure to make any argument to the contrary and the deemed admission of all properly pled allegations, Respondent is subject to discipline pursuant to Wis. Stat. § 440.26(6)(a)1., 2., and 4., and Wis. Admin. Code § SPS 35.01.

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 Division requests that Respondent’s private security person permit be revoked. Because Respondent has made no argument to the contrary, and because the recommended discipline is consistent with the purposes articulated in *Aldrich* and with case law, I adopt the Division’s recommendation.

“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 revocation is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189–90, 349 N.W.2d 68 (1984).

Private security persons are charged with protecting the public, keeping the peace, and preventing the occurrence of criminal actions. Contrary to this authority and responsibility, Respondent engaged in obscene and threatening behavior. This behavior demonstrates Respondent’s lack of respect for both the law and public safety.

In addition to ignoring the requirements of the law, Respondent has also ignored the Department’s authority. Respondent did not disclose his conviction within the required time frame. Respondent’s lack of accountability was further demonstrated in this proceeding, in which Respondent did not participate. Accordingly, Respondent has failed to fulfill the responsibilities of his profession. Therefore, revocation of Respondent’s private security person permit is an appropriate response to his disrespect for the law, the public welfare, and the licensing authority governing his profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is unlikely here. Respondent failed to comply with the reporting requirements of his permit, which exist to ensure the continuing competence of the credential holder. He also failed to participate in this proceeding. Because Respondent will not submit to the authority of the licensing agency, it is contrary to public safety for Respondent to continue to hold a permit. Revocation of Respondent's permit would coincide with the strong precedent that the requirements of licensure are to be taken seriously and that cooperation with licensing proceedings by the Department is required in all instances.

In light of the facts of this case and the factors set forth in *Aldrich*, revocation of Respondent's private security person permit is warranted.

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. The Department has also, in previous orders, considered many factors when determining if all or part of the costs should be assessed against a Respondent. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS0802183 CHI) (Aug. 14, 2008). It is within the Department'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.

Considering the factors significant in this case, 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 the Complaint were deemed admitted. This is not a case where the Division wasted resources or incurred additional costs by alleging multiple counts and then failing to prove those counts. Additionally, Respondent's conduct and violations are serious. Respondent committed a violation that indicates lack of respect for the law and the public welfare. Finally, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. As such, fairness weighs heavily in favor of requiring Respondent to pay the costs of this proceeding which resulted in significant discipline, rather than spreading the costs among all permitted private security persons in Wisconsin.

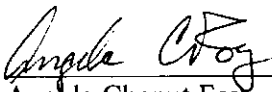
ORDER

For the reasons set forth above, IT IS ORDERED that Respondent Ryan Sullivan's private security person permit (number 36977-108) is REVOKED, effective on the date the Final Decision and Order is signed by the Department.

IT IS FURTHER ORDERED that should Respondent ever apply for any credential with the Department in the future, Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18, prior to the Department's consideration of any such application.

Dated at Milwaukee, Wisconsin on September 21, 2021.

STATE OF WISCONSIN
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By: 
Angela Chaput Foy
Administrative Law Judge