

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE SOCIAL WORKERS SECTION OF THE MARRIAGE AND FAMILY
THERAPISTS, PROFESSIONAL COUNSELORS, AND SOCIAL WORKERS EXAMINING
BOARD

IN THE MATTER OF THE	:	FINAL DECISION AND ORDER
DISCIPLINARY PROCEEDINGS AGAINST	:	ORDER 0007847
	:	
MICHAEL E. DUX, L.S.W.,	:	DHA Case No. SPS-21-0043
RESPONDENT.	:	DLSC Case No. 19 SOC 046

BACKGROUND

On December 10, 2021, Administrative Law Judge Kristin Fredrick, State of Wisconsin, Division of Hearings and Appeals, issued a Proposed Decision and Order (PDO) in the above referenced matter. The PDO was mailed to all parties. The Respondent filed a request for a modification of the language of the PDO on December 21, 2021. The Division of Legal Services and Compliance filed a request for modification of the language of the PDO on December 23, 2021. Both parties also filed responses to these requests. On February 11, 2022, the Social Worker Section (Section) of the Marriage and Family Therapists, Professional Counselors, and Social Workers Examining Board (Board) met to consider the merits of the PDO. The Section voted to approve the PDO with variance. The PDO is attached hereto and incorporated in its entirety into this Final Decision and Order with Variance (Order).

VARIANCE

Pursuant to Wis. Stat. §§ 440.035(1) and 441.07, the Board is the regulatory authority and final decision maker governing disciplinary matters of those credentialed by the Board. The matter at hand is characterized as a class 2 proceeding pursuant to Wis. Stat. § 227.01(3). The Board may make modifications to a PDO, a class 2 proceeding, pursuant to Wis. Stat. § 227.46(2). In the present case, the Board adopts the PDO in its entirety except for the entire Order section. The

Board finds that this variance will be more consistent with the facts of this matter and the Board's precedent in similar cases, and further finds that the proposed restrictions are necessary under the circumstances to protect the public health and safety.

That section is removed and the following is substituted in its place:

ORDER:

1. Respondent is REPRIMANDED.
2. Respondent's certificate to practice social work in the state of Wisconsin (certificate number 6709-120) is LIMITED as follows:
 - a. For a period of at least two (2) years from the date of this Order:
 - i. Respondent shall enroll and participate in a drug and alcohol monitoring program which is approved by the Department (Approved Program). Enrollment shall occur within thirty (30) calendar days from the date of this Order.
 - ii. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
 1. Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 2. Production of a urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
 3. The Approved Program shall require the testing of specimens at a frequency of not less than forty-nine (49) times per year, for at least the first year of this Order. Thereafter, the Section may adjust the frequency of testing on its own initiative at any time and/or Respondent may petition for a modification of testing frequency per paragraph 4.
 4. Respondent shall pay the costs associated with monitoring by the Approved Program and the required testing set forth above.

iii. Respondent shall abstain from all personal use of alcohol.

iv. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed, or administered by a practitioner for a legitimate medical condition.

Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, the Section or its designee. Copies of these releases shall immediately be filed with the Department Monitor. Respondent shall disclose the name and address of such practitioner to the Department Monitor within five (5) business days of receipt of a prescription for controlled substances.

v. Respondent shall report to the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within twenty-four (24) hours of ingestion or administration of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered, or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.

vi. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that he may take from time to time. Respondent shall abstain from all use of over-the-counter medications, products, or other substances (including but not limited to natural substances, such as poppy seeds or any products containing alcohol) which may mask consumption of controlled substances or alcohol, create false positive screening results, or otherwise interfere with Respondent's test results, treatment, or rehabilitation, unless ordered by a physician, in which case the drug must be reported as described in paragraph 3(a)v. It is Respondent's responsibility to educate himself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.

vii. All positive test results are presumed valid and may result in automatic suspension of licensure by the Section or the Section's designee. Respondent must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.

viii. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the

Section or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.

ix. Respondent shall practice social work only in a work setting pre-approved by the Section or its designee. Respondent may continue to practice as a Care Manager at My Choice Wisconsin.

x. Should Respondent's employment change, Respondent shall provide his employer with a copy of this Order before engaging in any employment as a social worker. Respondent shall provide the Department Monitor with written acknowledgment from each social work employer that a copy of this Order has been received. Such acknowledgment shall be provided to the Department Monitor within fourteen (14) days of beginning new employment.

xi. Respondent shall not practice as a social worker in a setting in which Respondent has access to controlled substances. Respondent shall provide the Department Monitor with written acknowledgment from each employer that Respondent does not have access to controlled substances. Such acknowledgment shall be provided to the Department Monitor within fourteen (14) days from the date of this Order for any current employer.

xii. Respondent shall continue to attend Narcotics Anonymous (NA) and/or Alcoholics Anonymous (AA) meetings, or an equivalent program for recovering professionals, no less than twice per week. Attendance of Respondent at such meetings shall be verified by the speaker or chair and reported quarterly to the Department Monitor.

xiii. Respondent shall provide quarterly reports from his NA/AA sponsor to the Department Monitor, verifying Respondent's continued sobriety and communication with his sponsor.

3. A violation of this Order includes a positive drug or alcohol screen.

4. After the first year from the date of this Order, Respondent may petition the Section for a modification of the terms of this Order. After two (2) consecutive years of successful compliance, the Respondent may petition the Section for return of full licensure. The Section may grant or deny any petition, in its discretion, or may modify this Order as it sees fit.

5. Any requests, petitions, payments 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) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

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

6. In the event Respondent violates any term of this Order, Respondent's certificate (number 6709-120), or Respondent's right to renew his certificate, may, in the discretion of the Section or its designee, be SUSPENDED, without further notice or hearing. The Section 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.

7. This Order is effective on the date of its signing.

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.

Dated at Madison Wisconsin this _____ day of February 2022.

SOCIAL WORKERS SECTION OF THE WISCONSIN MARRIAGE AND FAMILY
THERAPISTS, PROFESSIONAL COUNSELORS, AND SOCIAL WORKERS EXAMINING
BOARD

By: Sheng H. Yang 2/15/2022
A Member of the Section Date



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

In the Matter of Disciplinary Proceedings
Against Michael E. Dux, L.S.W., Respondent

DHA Case No. SPS-21-0043
DLSC Case No. 19 SOC 046

PROPOSED DECISION AND ORDER

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

Michael E. Dux, L.S.W.
N5224 Hidden River Road
West Salem, WI 54669

Wisconsin Social Worker Section of the Marriage and Family Therapy, Professional
Counseling and Social Work Examining Board (Section)
P.O. Box 8366
Madison, WI 53707-8366

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

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

PROCEDURAL HISTORY

These proceedings were initiated on May 28, 2021, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a formal complaint against Respondent Michael Dux, L.S.W. (Respondent). The complaint alleged that the Respondent engaged in unprofessional conduct as defined under Wis. Admin. Code § MPSW 20.02(9). Administrative Law Judge Andrea Brauer was initially assigned to the matter and an adjourned prehearing conference was scheduled and held on August 4, 2021, at which time the Respondent advised that he was not contesting the allegations against him. The parties agreed that the matter of discipline could be decided on written briefs in lieu of conducting a hearing in the matter. The matter was subsequently reassigned to Administrative Law Judge Kristin Fredrick and an Amended Prehearing Conference Report and Scheduling Order was entered on August 26, 2021. The Amended Scheduling Order required that the parties execute a written Stipulation as to the facts and conclusions of law by October 8, 2021. In addition, the

Division was to file its written argument for recommended discipline by October 8, 2021; the Respondent to file his response by November 11, 2021.

The parties jointly executed a Stipulation of Facts and Conclusions of Law on October 4, 2021. The Division's Brief in Support of Judgment, Discipline and Costs was received on October 8, 2021. The Respondent failed to file a response by the November 11, 2021, deadline but did send an email response on November 16, 2021. Because the parties agree that the matter no longer involves any disputed material issues of fact or law, the sole issue of discipline can be decided on the basis of the parties' respective briefs pursuant to Wis. Admin. Code § HA 1.11(3).

FINDINGS OF FACT

1. Respondent Michael E. Dux, L.S.W., is certified in the state of Wisconsin to practice social work, having certificate number 6709-120, first issued on April 16, 1998, and was current through February 28, 2021. Despite the postponement of credential expiration due to Covid-19 under 2021 Wis. Act 10, the Respondent has not completed any renewal requirements. (Stipulation of Facts ¶ 1)

2. The Respondent's most recent address on file with the Department is N5224 Hidden River Road, West Salem, Wisconsin 54669. (Stipulation ¶ 2)

3. At all times relevant to this proceeding, Respondent was employed as a social worker at a government agency located in La Crosse, Wisconsin (Agency). (Stipulation ¶ 3)

4. In January 2018, the Respondent starting using crystal methamphetamine. By the Fall of 2018, Respondent had become dependent on crystal methamphetamine and used the substance daily. (Stipulation ¶ 4)

5. Due to his addiction, Respondent had difficulty focusing and prioritizing, and struggled to maintain his workload at the Agency. Respondent used crystal methamphetamine while at work to stay awake. (Stipulation ¶ 5)

6. On April 30, 2019, the Agency terminated Respondent's employment for failure to abide by the Agency's Drug and Alcohol-Free Workplace Policy. (Stipulation ¶ 6)

7. Respondent received alcohol and other drug abuse (AODA) treatment and counseling between April 2019 and October 2019. A Discharge Summary dated October 16, 2019, states that Respondent reported doing well in his recovery and did not feel that individual counseling was needed any longer. The records reflect a Final Evaluation of "Prognosis-Good." (Stipulation ¶ 7)

8. Respondent has regularly attended weekly NA/AA meetings for the last 2 ¼ years and has engaged in that program and worked the steps with his sponsor during that time. (Stipulation ¶ 8)

9. Respondent has not received any additional inpatient or outpatient AODA treatment or counseling since his discharge from the aforementioned treatment on October 16, 2019. (Stipulation ¶ 9)

DISCUSSION

Burden of Proof

The burden of proof in disciplinary proceedings is on the Division to show by a preponderance of the evidence that the events constituting the alleged violations occurred. Wis. Stat. § 440.20(3); *see also* Wis. Admin. Code § HA 1.17(2). To prove by a preponderance of the evidence means that it is “more likely than not” that the examined action occurred. *See State v. Rodriguez*, 2007 WI App. 252, ¶ 18, 306 Wis. 2d. 129, 743 N.W.2d 460, citing *United States v. Saulter*, 60 F.3d 270, 280 (7th Cir. 1995).

Violations

Pursuant to Wis. Admin. Code § MPSW 20.02(9) “Unprofessional conduct” includes the following:

...

(9) Practicing or attempting to practice while the credential holder is impaired due to the utilization of alcohol or other drugs, or as a result of an illness which impairs the credential holder's ability to appropriately carry out the functions delineated under the credential in a manner consistent with the safety of a client, patient, or the public.

...

Wis. Stat. § 457.26 Disciplinary proceedings and actions.

(1) Subject to the rules promulgated under s. 440.03 (1), the appropriate section of the examining board may make investigations and conduct hearings to determine whether a violation of this chapter or any rule promulgated under this chapter has occurred.

(2) Subject to the rules promulgated under s. 440.03 (1), the appropriate section of the examining board may reprimand a license holder or deny, limit, suspend, or revoke a credential under this chapter if it finds that the applicant or credential holder has done any of the following:

...

(e) Subject to ss. 111.321, 111.322, and 111.34, practiced social work, advanced practice social work, independent social work, clinical social work, marriage and family therapy, or professional

counseling while his or her ability to practice was impaired by alcohol or other drugs.

...

The Division's Complaint in this matter alleged that the Respondent engaged in unprofessional conduct as a result of practicing or attempting to practice while impaired due to the Respondent's use of crystal methamphetamine while at work. The Respondent does not dispute that he engaged in unprofessional conduct and entered into a Stipulation of Facts acknowledging his conduct and the conclusion that his conduct amounted to unprofessional conduct. (Stipulation ¶¶ 4 and 5)

Based upon the unrefuted facts, I find that the Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code § MPSW 20.02(9) and is subject to discipline under Wis. Stat. § 457.26 as a result of practicing social work while his ability to practice was impaired by drugs.

Discipline

As a result of his undisputed conduct and violation set forth above, Respondent acknowledges that he is subject to discipline pursuant to Wis. Stat. § 457.26(2)(e). (Stipulated Conclusion of Law ¶ 3) The Division seeks a reprimand of the Respondent's social work certificate and that his license be limited.

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976). "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, 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). Thus, the primary purpose of assessing discipline is to "protect the public interest and assure the moral fitness and professional competency" of the license holder. See *State v. MacIntyre*, 41 Wis. 2d 481, 484, 164 N.W.2d 235 (1969).

The Respondent does not dispute that his conduct in using crystal methamphetamine during the course of practicing social work was unprofessional. Moreover, the Respondent has not submitted documentation or a statement contesting the Department's or Section's right to discipline the Respondent. Although the Respondent is not contesting the Division's requested reprimand, he does not agree with all of the limitations and conditions that the Division proposes be placed on his license, particularly due his financial concerns. The Division seeks a number of standard monitoring conditions and limitations of the Respondent's credentials in this matter as a result of his conduct. In support of the recommended limitations, the Division cites to numerous prior disciplinary decisions and orders issued against individuals who allegedly committed unprofessional conduct by their use of alcohol and/or drugs. However, only one of the cases cited

involved a reprimand followed by two years of drug monitoring. See *In the Matter of Disciplinary Proceedings against Lisa R. Hergert*, Order Number 0006902 (July 21, 2020). The *Hergert* case involved a professional counselor ingesting another person's medication and then providing counseling services while under the influence. The discipline was imposed less than six months after the alleged incident. However, unlike the present matter, the counselor in the *Hergert* case had not successfully completed treatment and maintained sobriety for nearly two and half years prior to the reprimand order. The rest of the cases that the Division cites in its brief are distinguishable as they involve license suspensions conditioned upon compliance with the Department's standard five-year impairment order due to more egregious allegations of alcohol and/or drug use that most often involved criminal charges.

The allegations in the Complaint and the Stipulated Facts in the present matter date back to 2018. The Complaint and Stipulation acknowledge that the Respondent received AODA treatment in 2019 and was discharged in October 2019 with the Respondent reportedly "doing well in his recovery." (Stipulation ¶ 7) The Stipulated facts also state that the treatment Final Evaluation gave the Respondent a good prognosis. (*Id.*) Further, the parties' Stipulation confirms that the Respondent regularly attends weekly NA/AA meetings and is working a 12-step program with a sponsor. (Stipulation ¶ 8) The Division acknowledges that the Respondent has had 2.5 years of sobriety. (Division Brief, p. 8) While I find support for ordering some degree of monitoring, which is standard practice by the Department, I do not find support for the extent of monitoring requested in the present matter given the individual facts in this case and no cited precedent for discipline in a case factually similar to the present matter. The Division has cited to only one prior example of discipline involving a reprimand with licensure conditioned upon compliance with a two-year monitoring program. However, even that case is distinguishable from the present matter for the reasons described above. The Stipulation of Facts, particularly the Respondent's existing 2.5 years of sobriety and ongoing 12-step program participation, does not establish the need for drug and alcohol monitoring as extensive as required by the Division's requested conditions. Balancing the appropriateness of continued monitoring, the questionable need for extensive monitoring in this matter, with the anticipated cost associated with such monitoring, I find that monitoring should be tailored to this individual case.

Costs

The Division requests that Respondent be ordered to pay the full costs of this investigation and of these proceedings. In an email forwarded after the deadline set for filing his response, the Respondent summarizes his financial situation, including working in employment that pays him far less than his previous social work job, a divorce that left him without the benefit of a second household income and the need to contribute to his sons' college educations.

The Wisconsin Social Worker Section of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board (Section) 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...

Similarly, Wis. Stat. § 441.51 reads in part:

- (5) Additional authorities invested in party state licensing boards.
- (a)(6) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

The above statutes do not require any particular analysis when determining whether to assess all or part of the costs in a proceeding against the Respondent. However, in exercising its discretion, the Section must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesenv. 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 and its numerous boards generally consider 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*, (LS0802183 CHI) (Aug. 14, 2008). It is within the Section's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

The following facts are relevant to the instant case: First, the allegations raised in the Division's complaint were all undisputed by the Respondent and the Respondent willingly entered into a stipulation admitting to having engaged in unprofessional conduct under Wis. Admin. Code § MPSW 20.02(9) thereby saving the Division much time, effort, or cost. Second, the Respondent appears to have been cooperative throughout the investigation. Third, this is not a case where the Division wasted resources or incurred additional costs as a result of the Respondent challenging the allegations; rather, he simply sought a different sanction. Fourth, while the Respondent's conduct may be characterized as serious, the Division is only seeking a reprimand and limitation of the Respondent's credentials. Fifth, the Respondent will already be responsible for the costs of monitoring per the proposed Order set forth below. Sixth, there have been no facts or evidence presented to establish whether the Respondent has committed prior violations. Based upon the only prior case cited by the Division that involved a reprimand and Stipulation (*In re Hergert*, Order No. 0006902), costs were only imposed in the amount of \$450. Finally, although the Department is a program revenue agency whose operating costs are funded by the revenue received

from credential holders, I do not find that this factor alone weighs more heavily than all the other factors combined to require the Respondent to pay the entire costs of this proceeding.

Accordingly, based upon all of the above, particularly the mitigating factors identified, I do not find that the Division has established that all of the costs of this proceeding should be assessed against Respondent pursuant to Wis. Admin. Code § SPS 2.18. Instead, consistent with the *Hergert* disciplinary order, I would assess costs in the amount of \$450.00.

CONCLUSIONS OF LAW

1. The Social Worker Section of the Wisconsin Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 457.26.
2. Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code § MPSW 20.02(9) by practicing or attempting to practice social work while impaired due to the utilization of drugs.
3. As a result of the above conduct, Respondent is subject to discipline under Wis. Stat. § 457.26(2)(e).
4. A reprimand of the Respondent's social work credentials is reasonable and appropriate.
5. The Division of Hearings and Appeals has the authority to issue this proposed decision pursuant to Wis. Stat. § 227.46 and Wis. Admin. Code § SPS 2.10.

PROPOSED ORDER

Accordingly, it is hereby ORDERED that the Respondent's certificate to practice professional social work in Wisconsin be reprimanded and limited as follows:

1. Respondent is REPRIMANDED.
2. Respondent's certificate to practice social work in the State of Wisconsin (certificate number 6709-120) is LIMITED as follows:

For a period of at least two (2) years from the date of this Order:

- a. Respondent shall enroll and participate in a drug and alcohol monitoring program which is approved by the Department (Approved Program). Enrollment shall occur within thirty (30) calendar days from the date of this Order.

- i. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements of participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements may include:
 - (a) Contact with the Approved Program as directed, but no less than weekly during the first six months of this Order. If the Respondent demonstrates compliance with this Order during the first six months, then contact with the Approved Program shall continue no less than twice per month for the remaining period of the Order or until such time as the Respondent successfully petitions for modification of this Order.
 - (b) Production of a urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
 - (c) The Approved Program shall require random testing of specimens at a frequency of not less twenty (20) times during the first six months of monitoring. If there are no positive test results during the first six months of monitoring, then the Respondent shall submit to random testing no less than an additional ten (10) specimens during the remaining six months of the first year of this Order. Thereafter, the Section may adjust the frequency of testing on its own initiative at any time and/or Respondent may petition for a modification of testing frequency per paragraph 4 below.
 - (d) The Respondent shall pay the costs associated with monitoring by the Approved Program and the required testing set forth in paragraph 2(a)(i) above.
- ii. Respondent shall abstain from all personal use of alcohol.
- iii. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed, or administered by a practitioner for a legitimate medical condition. The Respondent shall disclose his drug and alcohol history and the existence and nature of this Order to a practitioner prior to the ordering of any prescribed controlled

substances. Respondent shall disclose the name and address of any practitioner to the Department Monitor within five (5) business days of receipt of a prescription for controlled substances and shall provide a signed release authorizing the practitioner to discuss the Respondent's treatment with, and provide copies of treatment records to, the Section or its designee. Copies of these releases shall also be filed with the Department Monitor.

- iv. Respondent shall report to the Department Monitor all medications and drugs prescribed to the Respondent within twenty-four (24) hours of being prescribed the medication, each time the prescription is filled or refilled, and shall provide the Department Monitor with copies of all prescriptions.
 - v. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that he may take from time to time. Respondent shall abstain from all use of over-the-counter medications, products, or other substances (including but not limited to natural substances, such as poppy seeds or any products containing alcohol) which may mask consumption of controlled substances or alcohol, create false positives screening results, or otherwise interfere with Respondent's test results, treatment, or rehabilitation, unless ordered by a physician, in which case the drug must be reported as described in paragraph 2(a)(iii-v). It is the Respondent's responsibility to educate himself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
 - vi. All positive test results are presumed valid and may result in automatic suspension of licensure by the Section or the Section's designee. Respondent must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.
 - vii. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Section, or its designee, may determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- b. Respondent shall practice social work only in a work setting pre-approved by the Section or its designee. Respondent may continue to practice as a Care Manager at My Choice Wisconsin.

- c. Should Respondent's employer change, Respondent shall provide his employer with a copy of this Order before engaging in any employment as a social worker. Respondent shall provide the Department Monitor with written acknowledgement from each social work employer that a copy of this Order has been received. Such acknowledgment shall be provided to the Department Monitor within fourteen (14) days of beginning new employment.
 - d. Respondent shall not practice as a social worker in a setting in which Respondent has access to controlled substances. Respondent shall provide the Department Monitor with written acknowledgement from each employer that Respondent does not have access to controlled substances. Such acknowledgement shall be provided to the Department Monitor within fourteen (14) days from the date of this Order for any current employer.
 - e. Respondent shall continue to attend Narcotics Anonymous (NA) and/or Alcoholics Anonymous (AA) meetings, or an equivalent program for recovering professionals, no less than once per week. Attendance of Respondent at such meetings shall be verified by the speaker or chair and reported quarterly to the Department Monitor.
 - f. Respondent shall provide quarterly reports from his NA/AA sponsor to the Department Monitor, verifying Respondents continued sobriety and communication with his sponsor.
3. The Section or its designee may, without hearing, suspend Respondent's professional counselor license upon receipt of information that Respondent is in substantial or repeated violation of any provision of this Order. A substantial violation includes, but is not limited to, a positive drug or alcohol screen. A repeated violation is defined as the multiple violations of the same provision or violation of more than one provision.
4. After the first year from the date of this Order, Respondent may petition the Section for a modification of the terms of this Order. After two (2) consecutive years of successful compliance, the Respondent may petition the Section for the lifting of all limitations and conditions on his license and for the return of full licensure. The Section may grant or deny any petition, in its discretion, or may modify this Order as it sees fit.
5. The section or its designee may terminate the suspension if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the suspension to be terminated. Whether to terminate the suspension shall be wholly in the discretion of the Section or its designee.
6. Within 120 days from the date of this Order, Michael E. Dux, L.S.W., shall pay COSTS of this matter in the amount of \$450.00.

7. Any requests, documents 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://dpsmonitoring.wi.gov>

8. In the event that Respondent violates any term of this order, Respondent's certificate (no. 6709-120) to practice social work in the state of Wisconsin may, in the discretion of the Section or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Section 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

The terms of this Order are effective the date the Final Decision and Order is signed by the Board.

Dated at Madison, Wisconsin on December 10, 2021.

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

By: _____

Kristin P. Fredrick
Administrative Law Judge