

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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

In the Matter of the Disciplinary Proceedings
Against Tracie L. Dill, S.A.C.-I.T.,
Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 00079 10**

Division of Legal Services and Compliance Case No. 20 RSA 019

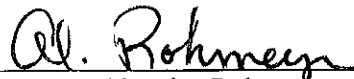
The State of Wisconsin, Department of Safety and Professional Services, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 28th day of March, 2022.



Aloysius Rohmeyer
Chief Legal Counsel
Department of Safety and Professional Services



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings
Against Tracie L. Dill, S.A.C.-I.T.,
Respondent.

DHA Case No. SPS-21-0089
DLSC Case No. 20 RSA 019

PROPOSED DECISION AND ORDER

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

Tracie L. Dill, S.A.C.-I.T.
601 Montgomery Street
South Beloit, IL 61115

Tracie L. Dill, S.A.C.-I.T.
179 Peaceful Lane
Carbondale, IL 62901

Tracie L. Dill, S.A.C.-I.T.¹
200 Paradise Dr., Lot 9
Carterville, IL 62918

Wisconsin Department of Safety and Professional Services
P.O. Box 8366
Madison, WI 53708-8366

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

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

PROCEDURAL HISTORY

On November 30, 2021, the Department of Safety and Professional Services, Division of Legal Services and Compliance (Department), filed a Complaint against Respondent Tracie L. Dill, S.A.C.-I.T., alleging she committed unprofessional conduct by engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient, pursuant to Wis. Admin. Code § SPS 164.01(2)(m), and by failing to avoid dual relationships that

¹ The Department was informed of this address for Respondent after the Notice of Default was issued in this matter.

may have impaired her objectivity or created a conflict of interest, pursuant to Wis. Admin. Code § SPS 164.01(2)(n).

On November 30, 2021, the Department served the Notice of Hearing and Complaint upon Respondent by sending a copy to Respondent's address on file with the Department via certified and regular first-class mail, consistent with Wis. Admin. Code § SPS 2.08 and Wis. Stat. § 440.11(2).² The U.S. Postal Service returned the documents with a note, which stated "Return to Sender – Not Deliverable as Addressed – Unable to Forward."³

Respondent was required to file an Answer within 20 days from the date of service of the Complaint, pursuant to Wis. Admin. Code § SPS 2.09(4). No Answer was filed. After the expiration of the 20-day time period to file an Answer, Administrative Law Judge (ALJ) Kristin Fredrick scheduled a telephone prehearing conference for January 12, 2022, at 10:00 a.m. Notice of the prehearing conference was sent to both parties, with instructions that Respondent contact the ALJ no later than January 11, 2022, to provide her current telephone number. Respondent did not contact the ALJ.

The prehearing conference was held as scheduled on January 12, 2022, ALJ Andrea Brauer presiding. Respondent failed to appear at the telephone prehearing conference on January 12, 2022. The Department provided ALJ Brauer with two telephone numbers for Respondent it had on file, and the ALJ attempted to reach Respondent at both numbers. The ALJ left a voicemail message for Respondent at one of the numbers asking Respondent to contact the ALJ by 10:20 a.m. or the ALJ would proceed without her. No voicemail message could be left at the other number. Respondent did not respond or otherwise contact ALJ Brauer.

On January 12, 2022, the Department moved for default based on Respondent's failure to file an Answer to the Complaint and failure to appear at the telephone prehearing conference, pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

On January 13, 2022, ALJ Brauer issued a Notice of Default against Respondent and ordered the Department to file a recommended Proposed Decision and Order by February 11, 2022. The Department timely filed its recommended Proposed Decision and Order.

FINDINGS OF FACT

Facts As Alleged in the Complaint

1. Respondent Tracie L. Dill, S.A.C.-I.T., is certified in the state of Wisconsin as a substance abuse counselor-in-training, having certificate number 18879-130, first issued on June

² The Department also mailed a copy to Respondent's forwarding address in Carbondale, Illinois, and emailed a copy to Respondent's email address on file with the Department and an alternate email address.

³ The U.S. Postal Service also returned the Notice of Hearing and Complaint sent to Respondent via certified mail at her forwarding address in Carbondale, Illinois, marked "Return to Sender – Attempted, Not Known."

3, 2019, and currently expired as of February 28, 2021. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to apply for renewal of her certificate until February 28, 2026.

2. Respondent's address on file with the Department is 601 Montgomery Street, South Beloit, Illinois 61115.

3. On April 7, 2021, the Department received a forwarding address for Respondent from the U.S. Postal Service of 179 Peaceful Lane, Carbondale, Illinois 62901.

4. At all times relevant to this proceeding, Respondent was employed as a substance abuse counselor-in-training at a drug treatment facility in Beloit, Wisconsin (Facility).

5. On June 17, 2020, the Department received a complaint from the Facility indicating that it received a tip on May 8, 2020, that Respondent was involved in a personal relationship with Patient A, a male born in 1982, and planning to move with him to southern Illinois.

6. Respondent provided substance abuse counseling services to Patient A at the Facility until her resignation in April 2020.

7. Shortly after the tip was received by the Facility on May 8, 2020, Patient A stopped coming to the Facility for treatment.

8. On May 11, 2020, Respondent posted on her Facebook account that she was "In a Relationship."

9. On February 12, 2021, Respondent married Patient A at 179 Peaceful Lane, Carbondale, Illinois.

Facts Related to Default

10. On November 30, 2021, the Department served the Notice of Hearing and Complaint upon Respondent at her last known address on file with the Department by both certified and regular first-class mail, pursuant to Wis. Admin. Code § SPS 2.08 and Wis. Stat. § 440.11(2). (Affidavit of Service ¶ 3(a) and (b)).

11. The U.S. Postal Service returned the Notice of Hearing and Complaint sent to Respondent via certified and regular mail at her address on file with the Department marked "Return to Sender – Not Deliverable as Addressed – Unable to Forward." (Affidavit of Service, ¶ 5).

12. Respondent was required to file an Answer within twenty days from the date of service of the Complaint, pursuant to Wis. Admin. Code § SPS 2.09(4). Respondent failed to file an Answer to the Complaint.

13. After the expiration of the 20-day time period to file an Answer, ALJ Fredrick scheduled a telephone prehearing conference for January 12, 2022, at 10:00 a.m. Notice of the prehearing conference was sent to both parties, with instructions that Respondent contact ALJ

Fredrick no later than January 11, 2022, to provide her current telephone number. Respondent did not contact the ALJ.

14. The prehearing conference was held as scheduled on January 12, 2022, ALJ Brauer presiding. Respondent failed to appear. The Department provided the ALJ with two telephone numbers for Respondent it had on file, and the ALJ attempted to reach Respondent at both numbers. The ALJ left a voicemail message for Respondent at one of the numbers asking Respondent to contact the ALJ by 10:20 a.m. or the ALJ would proceed without her. No voicemail message could be left at the other number. Respondent did not respond or otherwise contact ALJ Brauer.

15. On January 12, 2022, the Department moved for default judgment based on Respondent's 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).

16. On January 13, 2022, ALJ Brauer issued a Notice of Default against Respondent and ordered the Department to file a recommended Proposed Decision and Order by February 11, 2022. Respondent was found to be in default in light of her failure to file an Answer to the Complaint and failure to appear for the prehearing conference.

17. The Department 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 undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1). The Department has the authority to impose discipline against the Respondent pursuant to Wis. Stat. § 440.88(6).

Default

The Department properly served the Notice of Hearing and Complaint upon Respondent by mailing copies to her at her last known address as indicated in the records of the Department. Wis. Stat. § 440.11(2). Service by mail is complete upon mailing. Wis. Admin. Code § SPS 2.08(1).

An Answer to a Complaint shall be filed within 20 days from the date of service of the Complaint. Wis. Admin. Code § 2.09(4). 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." Wis. Admin. Code § SPS 2.14.

For a telephone prehearing conference, the ALJ may find a failure to appear grounds for default if any of the following conditions exist for more than 10 minutes after the scheduled time

for prehearing conference: (1) the failure to provide a telephone number to the ALJ after it was requested; (2) the failure to answer the telephone; (3) the failure to free the line for the proceeding; and (4) the failure to be ready to proceed with the prehearing conference as scheduled. Wis. Admin. Code § HA 1.07(3)(c).

Here, Respondent failed to file an Answer to the Complaint, failed to appear at the prehearing telephone conference on January 12, 2022, failed to provide a telephone number to the ALJ after it had been requested, failed to answer the telephone when the ALJ called, and failed to be ready to proceed with the prehearing conference as scheduled. Therefore, Respondent is in default. Findings may be made, and an order may be entered on the basis of the Complaint and other evidence.

Violations

Following a hearing held in conformity with Wis. Stat. ch. 227, the Department may revoke, deny, suspend, or limit the certification of a substance abuse counselor, or reprimand the substance abuse counselor for any unprofessional conduct, incompetence, or professional negligence. Wis. Stat. § 440.88(6). "Substance abuse counselor" also means a substance abuse counselor-in-training. Wis. Stat. § 440.88(1)(b).

Wisconsin Admin. Code § SPS 164.01(2) defines "unprofessional conduct" for substance abuse professionals to include the following:

- (2) Unprofessional conduct comprises any practice or behavior that violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public. Misconduct or unprofessional conduct includes the following:

...

- (m) Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient. For the purposes of this subsection, an adult shall continue to be a patient for 2 years after the termination of professional services ...

- (n) Failing to avoid dual relationships or relationships that may impair the substance abuse professional's objectivity or create a conflict of interest.

...

Respondent violated Wis. Admin. Code § SPS 164.01(2)(m) and (n) by having a prohibited personal relationship with Patient A, whom she was providing substance abuse counseling services to at the Facility until her resignation in April 2020. On May 8, 2020, the Facility received a tip that Respondent was involved in a personal relationship with Patient A and planning to move with him to southern Illinois. Patient A stopped coming to the Facility for treatment shortly after May 8, 2020. On May 11, 2020, Respondent posted on her Facebook account that she was "In a Relationship." On February 12, 2021, Respondent married Patient A at 179 Peaceful Lane in Carbondale, Illinois, a city in southern Illinois and Respondent's forwarding address.

Respondent's marriage to Patient A was within two years of the termination of Respondent's professional substance abuse counseling services.

By her actions, Respondent has committed unprofessional conduct pursuant to Wis. Admin. Code § SPS 164.01(2)(m) and (n) and is subject to discipline pursuant to Wis. Stat. § 440.88(6).

Discipline

The Department recommends a two-part disciplinary order, the terms of which are stated in the Order below. First, the Department recommends that Respondent's right to renew her certificate to practice as a substance abuse counselor-in-training in the state of Wisconsin be suspended for one year. Second, the Department recommends that Respondent also be required to, within nine months, complete a fitness for practice evaluation, six hours of education on appropriate patient-counselor boundaries, and six hours of ethics education. I find this to be an appropriate level of discipline and adopt the Department's recommendation.

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 recommended discipline is consistent with the purposes articulated in *Aldrich*. The uncontroverted allegations in the Complaint are serious. Respondent entered into a personal relationship with Patient A, an adult patient whom she was providing substance abuse counseling services. Entering into a dual relationship with Patient A impaired her objectivity as a substance abuse counselor-in-training and created a conflict of interest. Respondent married Patient A within a year of terminating her professional services, and thus I can reasonably conclude that she engaged in inappropriate sexual contact with a patient under Wis. Admin. Code § SPS 164.01(2)(m).⁴ Regardless of whether they eventually married, the rules of professional conduct specifically prohibit the Respondent's conduct when it occurs within two years after termination of services.

The recommended discipline protects the public from other instances of Respondent engaging in improper personal relationships with patients, and it deters other credential holders from engaging in similar conduct by suspending Respondent's ability to renew her certificate to practice for one year. It also promotes Respondent's rehabilitation by requiring her to complete within nine months a fitness to practice evaluation, six hours of education on appropriate patient-counselor boundaries, and six hours of ethics education. "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 recommended discipline is consistent with Department and related Board precedent. *See In the Matter of Disciplinary Proceedings Against Crystal L. Ognan, S.W., S.A.C.*, Order

⁴ The act of marriage implies sexual relations. *See Zerk vs. Zerk*, 257 Wis. 555, 558 (1950) ("Even in the absence of specific agreement upon the subject prior to the marriage most parties to the relationship contemplate sexual relations as an element of 'connubial bliss.'").

Number 0007269 (March 16, 2021) (substance abuse counselor-in-training certificate suspended for one year, and the respondent was ordered to complete a fitness-for-practice evaluation and take 12 hours of education on ethics and boundaries for having sexual relations with a patient three weeks after termination of services)⁵; see also *In the Matter of Disciplinary Proceedings Against Brad W. Knapp, L.P.C.*, Order Number LS0904143CPC (April 14, 2009) (professional counselor certificate suspended for 18 months, and the respondent was ordered to complete a fitness-for-practice evaluation for engaging in a personal relationship with a patient during the course of treatment and having sexual relations within two years after termination of services).⁶

Based upon the facts of this case and the factors set forth in *Aldrich*, the discipline recommended by the Department, pursuant to the terms and conditions of the Order below, is reasonable and 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. *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 and boards have considered the following factors when determining if all or part of the costs should be assessed against a 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 of this proceeding. Respondent engaged in a dual relationship and had sexual relations with a patient. Respondent failed to participate in her defense and defaulted, resulting in the factual allegations identified in the complaint being admitted. In addition, Respondent failed to provide current contact information to the ALJ, failed to appear at the prehearing conference, and failed to file an Answer to the Complaint or otherwise provide any argument regarding the allegations brought against her certificate to practice as a substance abuse counselor-in-training in Wisconsin.

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 credential holders who have not engaged in misconduct.

⁵ This decision is available online at: <https://online.drl.wi.gov/decisions/2021/ORDER0007269-00017531.pdf>.

⁶ This decision is available online at: <https://online.drl.wi.gov/decisions/2009/ls0904143cpc-00077409.pdf>.

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 Respondent's certificate to practice as a substance abuse counselor-in-training (certificate number 18879-130), and Respondent's appurtenant right to renew such certificate, are SUSPENDED for one year from the date of this Order.

IT IS FURTHER ORDERED that Respondent's certificate to practice as a substance abuse counselor-in-training (certificate number 18879-130), and Respondent's appurtenant right to renew such certificate, are LIMITED as follows:

1. Education

- (a) Within nine months of the date of this Order, Respondent shall successfully complete six hours of education on the topic of professional patient-counselor boundaries, and six hours of education on the topic of ethics, offered by a provider pre-approved by the Department, including taking and passing any exams offered for the courses.
- (b) The Department may change the number of credit hours and/or education topics in response to a request from Respondent. The Department may consider the topic availability and/or hours of education when determining if a change to the ordered education should occur.
- (c) Respondent shall submit proof of successful completion of the ordered education in the form of verification from the institution provider the education to the Department Monitor at the address stated below.
- (d) None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements related to Respondent's certificate or be used to upgrade a credential.
- (e) This limitation shall be removed from Respondent's certification after satisfying the Department or its designee that Respondent has successfully completed all ordered education.

2. Fitness-For-Practice Evaluation

- (a) Within nine months of the date of this Order, Respondent shall, at her own expense, undergo a fitness-for-practice evaluation with a pre-approved psychiatrist or psychologist who has not provided treatment to Respondent and is experienced in evaluating whether a healthcare professional is fit for practice (Evaluator).
- (b) Prior to evaluation, Respondent shall provide a copy of this Final Decision and Order to the Evaluator.

- (c) 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.
- (d) Within 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.
- (e) Respondent shall execute necessary documents authorizing the Department 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.
- (f) If the Evaluator determines that Respondent is not fit for practice, the Department or its designee may suspend Respondent's substance abuse counselor-in-training certificate 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.
- (g) If the Evaluator determines that Respondent is fit for practice or is fit for practice with limitations, the Department or its designee may limit Respondent's substance abuse counselor-in-training certificate in a manner that addresses any concerns the Department or its designee has as a result of the conduct set out in the Findings of Facts and/or 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 from 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.

IT IS FURTHER ORDERED that in the event Respondent violates any term of this Order, Respondent's certificate (number 18879-130), or Respondent's right to renew her certificate, may, in the discretion of the Department or its designee, be SUSPENDED indefinitely, without further notice or hearing, until Respondent has complied with the terms of the Order. The Department may, in addition and/or in the alternative refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

IT IS FURTHER ORDERED that 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 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) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

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

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 Milwaukee, Wisconsin, on February 28, 2022.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Telephone: (608) 266-2447
Email: Andrea.Brauer@wisconsin.gov

By: *Andrea Brauer*
Andrea Brauer
Administrative Law Judge