

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscga>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov



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

In the Matter of the Disciplinary Proceedings
Against Jessica K. Ryan, SAC-IT, Respondent.

FINAL DECISION AND ORDER

ORDER 0008427

Order No. _____

Division of Legal Services and Compliance Case No. 21 RSA 030

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 10th day of March, 2023.

Aloysius Rohmeyer Chief Legal Counsel

~~Member~~

Department of Safety and Professional Services



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

In the Matter of Disciplinary Proceedings Against
JESSICA K. RYAN, SAC-IT, Respondent.

DHA Case No. SPS-22-0061
DLSC Case No. 21 RSA 030

PROPOSED DECISION AND ORDER

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

Jessica K. Ryan, SAC-IT
403 W. Hamilton Ave.
Eau Claire, WI 54701

Wisconsin Department of Safety and Professional Services
P.O. Box 8366
Madison, WI 53707-8366

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

Attorney Alicia Kennedy
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 Jessica K. Ryan, SAC-IT (Respondent), by the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), on October 13, 2022, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. No Answer to the Complaint has been filed. Wis. Admin. Code § SPS 2.09(4).

Following the expiration of the 20-day period to file an Answer, the undersigned Administrative Law Judge (ALJ) Andrea Brauer scheduled a telephone prehearing conference for November 30, 2022, at 1:00 p.m. Notice of this Prehearing Conference was sent to both parties. Attorney Alicia Kennedy appeared on behalf of the Division. Respondent did not appear. Based on Respondent's failure to file an Answer to the Complaint and failure to appear for the

prehearing conference in this matter, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). The ALJ granted the motion.

On December 2, 2022, the ALJ issued a Notice of Default against Respondent and ordered that the Division file a recommended proposed decision and order no later than January 13, 2023. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-11 are taken from the Division's Complaint filed against Respondent in this matter.

1. Respondent Jessica K. Ryan, SAC-IT, is certified in the state of Wisconsin to practice as a substance abuse counselor-in-training, having certificate number 19244-130, first issued on August 25, 2020, and current through February 28, 2023.

2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is in Eau Claire, Wisconsin 54701.

3. At all times relevant to this proceeding, Respondent was employed as a substance abuse counselor-in-training with a governmental agency in the state of Wisconsin (Facility).

4. The Department received a complaint from the Facility alleging that Respondent entered into a sexual relationship with Client A within 3-4 months of termination of therapy.

5. On November 27, 2020, Client A completed group therapy with Respondent.

6. On February 13, 2021, Respondent submitted an Incident Report stating that Client A called her on her personal cell phone number. Respondent reportedly asked Client A to contact her on the number listed on her business card.

7. On February 21, 2021, Respondent submitted an Incident Report stating that Client A contacted her again on her personal phone via call and text. Respondent reported she reiterated to Client A, he needs to contact her office number. Respondent also reported she blocked his number.

8. On April 14, 2021, a Facility Security Director was notified that Respondent was in a relationship with Client A.

9. On April 28, 2021, Respondent was interviewed and admitted to having sexual contact with Client A. Respondent was placed on administrative leave.

10. On July 28, 2021, Respondent resigned.

11. On October 21, 2021, a Department Investigator emailed Respondent at the email address on file with the Department requesting a response to the allegations. Respondent did not respond.

Facts Related to Default

12. On October 13, 2022, the Division served the Notice of Hearing and Complaint in this matter on Respondent at her address of record with the Department by both certified and regular mail.

13. Respondent failed to file an Answer to the Complaint within 20 days as required by Wis. Admin. Code § SPS 2.09(4).

14. After the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for November 30, 2022, at 1:00 p.m. Notice of this prehearing conference was sent to both parties, with instructions that Respondent contact the ALJ with a telephone number at which Respondent could be reached for the conference no later than November 29, 2022. Respondent did not contact the ALJ.

15. At the prehearing conference held on November 30, 2022, Attorney Alicia Kennedy appeared on behalf of the Division. The ALJ attempted to reach Respondent at the telephone number that was on file with the Department for Respondent. The ALJ called the Respondent and left a voicemail following a recording. The ALJ left the line open for 10 minutes. Respondent did not contact the ALJ.

16. The Division moved for default based on Respondent's failure to answer the Complaint, as well as Respondent's failure to appear for the prehearing conference pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

17. On December 2, 2022, the ALJ issued a Notice of Default and ordered that the Division file and serve a recommended proposed decision and order no later than January 13, 2023.

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

DISCUSSION

Jurisdiction

The 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 a copy to her address of record with the Department. Service by mail is complete upon mailing. Wis. Admin. Code § SPS 2.08(1); Wis. Stat. § 440.11(2). 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.” *See also* Wis. Admin. Code § HA 1.07(3)(c).

Here, 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 also failed to appear at the prehearing telephone conference on November 30, 2022. Therefore, Respondent is in default, and findings and an order may be entered on the basis of the Complaint.

The burden of proof in disciplinary proceedings before the Board is a preponderance of the evidence. *See* Wis. Stat. § 440.20(3). However, given Respondent’s failure to answer the allegations in the Complaint and default, the facts in this proceeding are undisputed and are found on the basis of the Complaint.

Violations

The Department has the authority to discipline the Respondent pursuant to Wis. Stat. § 440.88(6), which states “The department may, after a hearing held in conformity with ch. 227, revoke, deny, suspend, or limit under this subchapter the certification of any substance abuse counselor, clinical supervisor...for...any unprofessional conduct”.

Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her certificate pursuant to Wis. Admin. Code § SPS 164.01(2)(m) by engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient. For purpose of this subsection, an adult shall continue to be a patient for two years after the termination of professional services. Based on the undisputed facts in the complaint, Respondent ended services with the client on November 27, 2020 and admitted to sexual contact with that client on April 28, 2021, approximately five months after the termination of professional services.

Respondent also violated Wis. Stat. § 440.20(5)(a) by failing to respond within 30 days to a request for information from the Department in connection with an investigation of alleged misconduct of the credential holder. According to the undisputed facts of the complaint, the Department requested a response to the above allegations on October 21, 2021 and Respondent did not respond. Respondent failed to appear and participate in these proceedings. Respondent’s actions, or lack thereof, demonstrate Respondent’s repeated failure to cooperate in a timely manner with the Department’s investigation.

The Respondent is therefore subject to discipline pursuant to Wis. Admin. Code § SPS 164.01(2) and Wis. Stat. § 440.88 for engaging in unprofessional conduct. She is also subject to discipline pursuant to Wis. Stat. § 440.20(5)(a) for failing to timely respond to the Department’s request for information.

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 certificate to practice as a substance abuse counselor-in-training be revoked. I adopt the Division's recommendation because the Respondent has made no argument to the contrary and failed to appear in these proceedings, and the recommended discipline is consistent with the purposes articulated in *Aldrich* and case law. Although promoting rehabilitation is one of the purposes of discipline, rehabilitation seems unlikely in this case. Respondent has refused to cooperate in these proceedings. Having obtained no information from Respondent during the pendency of the matter, the Department cannot ascertain whether any rehabilitative measures would be effective. Further, Respondent's refusal to cooperate in this disciplinary matter demonstrates a lack of respect for the Department's authority.

Moreover, Respondent's conduct was egregious. The case at hand involves Respondent engaging in sexual conduct with a former client within two years of termination of services. She also failed to cooperate with the Department. The Department's foremost priority in certifying and regulating substance abuse counselors and substance abuse counselors-in-training is protection of the public. To date, Respondent maintains an active certificate to practice as a substance abuse counselor-in-training in Wisconsin. A counselor-client relationship is a trust relationship, and a client is particularly vulnerable to the influence of the counselor. *State v. DeLain*, 280 Wis. 2d 51, 64, 695 N.W. 2d 484 (2005). An Order that revokes Respondent's certification is necessary to protect the public.

Revoking Respondent's certificate under these conditions protects the public from other potential instances of misconduct. "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). It follows that if the Department cannot assure the public of the credential holder'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). In the present case, the Department cannot assure the public that a substance abuse counselor-in-training who fails to cooperate with a lawful investigation into her conduct and violated the trust of the counselor-client relationship by engaging in sexual conduct with a client is competent to practice.

Revoking Respondent's certificate also deters other credential holders from engaging in similar conduct. Respondent has completely disregarded the Board's authority as well as the laws in place to protect public health and welfare. Therefore, the revocation of Respondent's certificate to practice as a substance abuse counselor-in-training in Wisconsin is an appropriate response.

Revocation is also in line with Department precedent for mental health professions. *See In the Matter of Disciplinary Proceedings Against Brad W. Knapp*, Order Number LS0904286RSA (April 28, 2009) (Department suspended¹ Respondent's license for an indefinite period of time to be no less than 18 months for sexual conduct with a client and for failing to cooperate with investigation and proceedings)²; *In the Matter of Disciplinary Proceedings Against Melissa Napiorkowski*, Order Number 0002094 (October 17, 2012) (Respondent's credential was revoked after she engaged in a relationship with an inmate assigned to her AODA caseload);³ *In the Matter*

¹ The Knapp case can be distinguished from the present case as Knapp cooperated with the Department and entered treatment, evidencing efforts at rehabilitation.

² <https://online.drl.wi.gov/decisions/2009/ls0904286rsa-00076403.pdf>

³ <https://online.drl.wi.gov/decisions/2012/ORDER0002094-00007862.pdf>

of *Disciplinary Proceedings Against Kenneth R. Pride, Ph.D.*, Order Number 0006727, (March 25, 2020) (Respondent's license was revoked after allegations he engaged in a sexual relationship with a patient)⁴.

Based upon the facts of this case and the factors set forth in *Aldrich*, revocation of Respondent's certificate 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 credential holder 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. The allegations involve serious charges of sexual conduct with a client and failure to cooperate with the Division's investigation. The level of discipline sought is revocation, the highest level of discipline available. Respondent failed to cooperate with the Division's investigation and this disciplinary process by failing to respond to the Division's requests for information, failing to answer the complaint, and failing to appear for the prehearing conference.

Finally, 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 proceeding on those licensees who have not engaged in misconduct. Therefore, it is appropriate for Respondent to pay the full costs of the investigation and prosecution in this matter, as determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED:

1. Respondent's certificate to practice as a substance abuse counselor-in-training in Wisconsin (license no. 19244-130), and Respondent's right to renew her certificate, are REVOKED.

⁴ <https://online.drl.wi.gov/decisions/2020/ORDER0006727-00016528.pdf>

2. Respondent shall pay all recoverable costs in these matters in an amount to be established pursuant to Wis. Admin. Code. § SPS 2.18.

3. Payment of costs (made payable to the Department of Safety and Professional Services), and any other questions or submissions related to this Order, may be directed to the Department Monitor at:


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 payment online at: <http://dpsmonitoring.wi.gov>.

4. The terms of this Order are effective the date the Final Decision and Order in this matter is signed by the Department.

Dated at Madison, Wisconsin, on February 8, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Tel. (414) 227-4027
Email: andrea.brauer@wisconsin.gov

By: 
Andrea Brauer
Administrative Law Judge