

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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

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In the Matter of the Disciplinary Proceedings  
Against Amber E. Falls, C.S.A.C., I.C.S.,  
Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0008928**

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**Division of Legal Services and Compliance Case No. 21 RSA 024**

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 22nd day of December, 2023.

Aloysius Rohmeyer DSPS Chief Legal Counsel  
Member  
Department of Safety and Professional Services



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

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In the Matter of Disciplinary Proceedings Against  
AMBER E. FALLS, C.S.A.C., I.C.S., Respondent

DHA Case No. SPS-23-0051  
DLSC Case No. 21 RSA 024

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PROPOSED DECISION AND ORDER

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

Amber E. Falls  
14672 46<sup>th</sup> Avenue North  
Lake Hallie, WI 54729

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:

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

PROCEDURAL HISTORY

On July 24, 2023, the Department of Safety and Professional Services, Division of Legal Services and Compliance (Department), filed a Complaint against Respondent Amber E. Falls, C.S.A.C., I.C.S., alleging Respondent violated or aided and abetted a violation of, any law or rule substantially related to practice as a substance abuse professional, pursuant to Wis. Admin. Code § SPS 164.01(2)(b), which constituted grounds to take disciplinary action against her privilege to practice as a clinical substance abuse counselor in Wisconsin.

The Department served the Notice of Hearing and Complaint upon Respondent by sending a copy to Respondent's last known address on file with the Department via certified and regular first-class mail, pursuant to Wis. Admin. Code § SPS 2.08 and Wis. Stat. § 440.11(2).

Respondent failed to file an Answer within twenty days from the date of service, as required by Wis. Admin. Code § SPS 2.09(4). The Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for August 29, 2023 at 11:00 a.m. Notice of the conference was sent to both parties with instructions that Respondent contact the ALJ no later than June 28, 2023 to provide her current telephone number. Respondent failed to contact the ALJ.

Respondent failed to appear at the prehearing conference on August 29, 2023. The ALJ attempted to contact Respondent at a telephone number provided by the Department but was unable to contact her. The ALJ also attempted to email Respondent at her email address on file with the Department. Respondent did not respond to the email or attempt to call the ALJ.

The Department moved for default 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). On August 29, 2023, the ALJ issued a Notice of Default against Respondent and ordered the Department to file a recommended Proposed Decision and Order by October 13, 2023. The Department timely filed its recommended Proposed Decision and Order.

## FINDINGS OF FACT

### Facts As Alleged in the Complaint

1. Respondent Amber E. Falls, C.S.A.C., I.C.S., is certified in the state of Wisconsin as a clinical substance abuse counselor, having certificate number 15313-132, first issued on September 29, 2008, and current through February 28, 2021.<sup>1</sup> Respondent is also certified as an intermediate clinical supervisor, having certificate number 15404-134, first issued on January 3, 2013, and currently expired as of March 1, 2019. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to apply for renewal of this certificate until February 28, 2024.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 14672 46<sup>th</sup> Avenue North, Lake Hallie, Wisconsin 54729.

3. On August 11, 2020, the Department issued Final Decision and Order No. 0006862 which reprimanded Respondent for failing to comply with the CE requirements for the 2017-2018 biennium.

4. On July 1, 2020, Respondent was charged with two counts of Identity Theft-Financial Gain, in Dane County Circuit Court Case No. 2020CF001645, a felony, in violation of Wis. Stats. §§ 943.201(2)(a) and 939.50(3)(h).

5. The Criminal Complaint alleged that between October 5 and December 1, 2017, Respondent, while a supervisor at a substance abuse clinic in Madison, Wisconsin, utilized the personal identifying information of an employee, including the employee's paystub and social security card, to obtain an apartment lease and utility account without the employee's consent.

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<sup>1</sup> Respondent has submitted an application for renewal of this certificate, which is currently pending. Pursuant to Wis. Stat. § 227.15(2), the certificate remains active until the Board acts upon the renewal.

6. On June 21, 2021, Respondent pled guilty and was convicted of two counts of Theft-False Representation <=\$2500, in Dane County Circuit Court Case No. 2020CF001645, a misdemeanor in violation of Wis. Stat. § 943.20(1)(d).

7. Respondent was sentenced to two years of probation for each count of identity theft, to run concurrently.

8. On June 22, 2021, Respondent applied for renewal for her clinical substance abuse counselor certificate. As part of her renewal application, Respondent self-reported the June 21, 2021 conviction.

## DISCUSSION

### Jurisdictional Authority

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...conducted [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 Department properly served the Notice of Hearing and Complaint upon Respondent by mailing copies to her at her last known address. 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.

The administrative law judge may find a failure to appear at a telephone prehearing conference grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for the prehearing conference: (1) the failure to provide a telephone number to the ALJ after it had been 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 within 20 days from the date of service, failed to appear at the prehearing telephone conference on August 29, 2023, failed to provide a telephone number to the ALJ after it had been requested, failed to answer the telephone when the ALJ called, failed to respond to the email sent by the ALJ and failed to be ready to proceed with the prehearing conference as scheduled. Therefore, Respondent is in default and findings may be made, and an order may be entered on the basis of the Complaint.

## Violations

Pursuant to Wis. Admin. Code § SPS 164.01(2)(b), it is unprofessional conduct to violate, or aid and abet the violation of any law or rule substantially related to the practice as a substance abuse professional. Respondent was convicted of two (2) counts of Theft-False Representation less than or equal to \$2500, in Dane County Circuit Court Case No. 2020CF001645, in violation of Wis Stat. § 943.20(1)(d). The facts of the underlying conviction involved the Respondent's misappropriating a fellow employee's personal information, including paystub and social security number, to lease an apartment and secure utilities.

Whether the Respondent's offense is "substantial related" to the practice of a substance abuse professional requires consideration of not only the elements of an offense but also whether "...the facts, events, and conditions surrounding the convicted offense materially relate to the facts, events, and conditions surrounding the job." *Cree v. LIRC*, 2022 WI 15, ¶ 17. The purpose of the "substantial relationship" test is to assess "whether the tendencies and inclinations to behave in a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed." *Cree* at ¶ 20, citing *County of Milwaukee v. LIRC*, 139 Wis. 2d 805, 824, 407 N.W.2d 908 (1987) (convictions for misdemeanor patient neglect while employed as nursing home administrator found to be substantially related to job as a crisis intervention specialist). Relevant and material circumstances to consider may also include whether the job "fosters criminal activity" or provides "the opportunity for criminal behavior", along with the "reaction to responsibility, or the character traits of the person." *Id.* at ¶ 21. In *Cree*, the Wisconsin Supreme Court found a substantial relationship existed between an individual's domestic abuse convictions for strangulation, battery, sexual assault and criminal damage to property and the job of application specialist based upon the following factors: opportunity to exert power and control when ideas or authority are challenged, an opportunity for violent encounters due to an absence of regular supervision, the seriousness and recency of the convictions, as well as, a pattern of violence and recidivism risk. *Id.* at ¶¶ 37-39.

In the present matter, Respondent committed an identity theft crime in the course of her employment as a supervisor at a substance abuse clinic. A substance abuse professional is responsible for maintaining a high level of trust and confidentiality. As a result of her employment, Respondent had access to sensitive information about another employee and used that information for her own personal gain. As a substance abuse counselor, Respondent also has access to sensitive information about her clients, which is an opportunity to commit further criminal behavior by using a client's identifying information for her personal gain. Respondent's continued practice would expose her consistently to circumstances which could foster criminal activity. The circumstances surrounding the Respondent's conviction, including the recency and seriousness of the crime and opportunity to commit further violations of trust due to access to confidential information, weigh heavily in finding a substantial relationship between her offense and the practice of a substance abuse professional. Respondent has presented no evidence to the contrary. Therefore, the uncontested facts establish that the Respondent engaged in unprofessional conduct under Wis. Admin. Code § SPS 164.01(2)(b).

## Discipline

The three purposes of discipline in a professional misconduct case are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct;

and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976). To accomplish these purposes, the Division recommends revocation of Respondent's certificates to practice as a clinical substance abuse counselor and as an intermediate clinical supervisor, as well as any appurtenant rights to renew those credentials. The recommended discipline is consistent with the purposes articulated in *Aldrich* by protecting the public and patients from other potential instances of misconduct by Respondent and deterring other credential holders from engaging in similar conduct.

Although promoting rehabilitation is one of the purposes of discipline, Respondent's rehabilitation cannot be ascertained given her failure to respond to the Department, her failure to respond to the complaint or otherwise participate in these proceedings, and her failure to provide any defense for her actions. Thus, 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 recognition of the Department's authority.

The Wisconsin Supreme Court has acknowledged that "the purpose of licensing statutes is not to benefit those persons licensed to practice under the statutes, but rather to protect the public by the requirement of a license as a condition precedent to practicing in a given profession. The granting of a license pursuant to such a statute has been characterized as a privilege." *Gilbert v. State Medical Examining Board*, 119 Wis. 2d 168, 188, 349 N.W. 2d 68 (1984). "Such statutes are grounded in the state's police power to protect the public welfare through safeguarding the life, health, and property of its citizens." *Id.* "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).

Revoking Respondent's credentials and right to renew holds Respondent accountable for her actions and protects the public by preventing Respondent from violating Wisconsin's rules of professional conduct again. Further, revocation of the Respondent's credentials and right to renew the same will deter other credential holders from engaging in similar conduct by sending a message that such conduct is intolerable. Respondent's actions warrant this discipline. Respondent committed her criminal offenses while serving in a position of trust and authority. Respondent's failure to respond to the complaint is further evidence that she has no regard for the Board's authority or any inclination to explain or otherwise rehabilitate herself.

Based upon the facts of this case and given that Respondent has made no argument to the contrary, has failed to appear in these proceedings, and because the recommended discipline is consistent with the purposes articulated in *Aldrich* and case law, I adopt the Department's recommendation. The revocation of the Respondent's credentials and the right to renew her certificates to practice as a clinical substance abuse counselor or as an intermediate clinical supervisor, 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; 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 have 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 credential holders; 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. The factual allegations identified in the complaint are serious in nature and were deemed admitted as a result of the Respondent's default in this case. The 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.

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. 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.

#### CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Wis. Stat. §§ 440.03(1) and 440.88(6) and Wis. Admin. Code ch. SPS 2.
2. The Respondent was properly found in default under Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c) based upon her failure to file an answer to the Complaint and her failure to provide a telephone number or appear for the prehearing conference.
3. The uncontested facts establish that the Respondent engaged in unprofessional conduct under Wis. Admin. Code § SPS 164.01(2)(b) by engaging in a violation of law substantially related to the practice as a substance abuse professional.
4. Revocation of the Respondent's credentials and her right to renew her certificates to practice as a clinical substance abuse counselor and as an intermediate clinical supervisor is reasonable and warranted.
5. 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.



6. The Division of Hearings and Appeals has the authority to preside over and render proposed decisions in disciplinary proceedings pursuant to Wis. Stat. § 227.46(1) and Wis. Admin. Code § SPS 2.10(2).

ORDER

For the reasons set forth above, IT IS ORDERED that:

1. Respondent's credentials and any appurtenant rights to renew Respondent's certificates to practice as a clinical substance abuse counselor and as an intermediate clinical supervisor in the state of Wisconsin are hereby REVOKED.

2. Respondent shall 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 payment online at: <http://dspsmonitoring.wi.gov>.

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

Dated at Madison, Wisconsin, on 2 of November, 2023.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
4822 Madison Yards Way, 5<sup>th</sup> Floor North  
Madison, Wisconsin 53705  
Telephone: (608) 266-2447  
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By: \_\_\_\_\_

Kristin P. Fredrick  
Administrative Law Judge