

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST : FINAL DECISION  
: AND ORDER  
DAVID J. MUELLER, RN, :  
LS0303191NUR :  
RESPONDENT. :

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The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes 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, Board of Nursing.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

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 this 6<sup>th</sup> day of June, 2003.

Linda Sanner, RN  
Board of Nursing

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

DAVID J. MUELLER, R.N.

RESPONDENT.

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PROPOSED DECISION

AND ORDER

LS0303191NUR

David J. Mueller  
3853 North Morris Boulevard  
Shorewood, WI 53211

Steven M. Gloe  
Division of Enforcement  
P.O. Box 8935  
Department of Regulation & Licensing  
Madison, WI 53708-8935

## PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on May 7, 2003, before administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney Steven M. Gloe. The respondent, David J. Mueller, did not answer the complaint and did not appear at the hearing.

Based on the entire record of this case, the undersigned administrative law judge recommends that the Board of Nursing adopt as its final decision in this matter, the

## following Findings of Fact, Conclusions of Law, and Order.

### FINDINGS OF FACT

1. David J. Mueller (DOB 06/01/1956) is duly licensed as a Registered Nurse in the state of Wisconsin (license #88710). This license was first granted on 08/21/1984.
2. The respondent's most recent address on file with the Wisconsin Board of Nursing is 3853 North Morris Boulevard, Shorewood, Wisconsin, 53211.
3. On February 28, 1992, the respondent's Wisconsin biennial registration of his nursing license expired, and the respondent did not seek to renew this license until June 4, 2002.
4. On exact dates unknown, but at least between May 1, 1994 and November 31, 2000, the respondent worked as a registered nurse in the capacity of Assistant Director of Nursing at Marina View Manor, 1522 N Prospect Ave, Milwaukee, Wisconsin.
5. On exact dates unknown, but at least between November 15, 2000 and May 23, 2002, Respondent worked as a registered nurse in the capacity of Assistant Director of Nursing at Heartland Health Care Center, N26 W23977 Watertown Road, Pewaukee, Wisconsin.
6. On or about June 4, 2002 Respondent submitted an Application for Re-Registration of (his) Registered Nurse License. In response to the application directive to account for all professional and non-professional activities and practice from date of graduation to the date of application, Respondent omitted any reference to his period(s) of unlicensed practice and falsely indicated "self-employed – home business" as his only employment from 1994 to the present.
7. On June 20, 2002, the Board of Nursing reinstated Respondent's license. This reinstated license was limited "to permit him to practice only as a participant in a board-approved RN refresher course."
8. The respondent was properly served with the notice of hearing and complaint according to law March 19, 2003.

### CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter, pursuant to Sec. 441.07, Stats.
2. The conduct described Findings of Fact paragraphs 3, 4 and 5 constitute unprofessional conduct in violation of Wis. Stats §§ 441.06 and 441.07(1)(b),(d).

3. The conduct described Findings of Fact paragraph 6 constitutes unprofessional conduct in violation of Wis. Stats. § 441.07(1)(a).

4. By failing to file an Answer as required by Wis. Admin. Code RL 2.09, and by failing to appear at the hearing, the respondent is in default under Wis. Admin. Code RL 2.14, and the Board of Nursing may make findings and enter an order on the basis of the Complaint and the evidence presented at the hearing.

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the registered nurse license, number 88710, of the respondent, David J. Mueller, is REVOKED. Costs are awarded to the Complainant.

#### OPINION

Section RL 2.14 of the Wisconsin Administrative Code provides that a respondent who fails to answer a complaint or fails to appear at a hearing is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent. In this case, the respondent did not file an answer to the above-captioned complaint, nor did he appear at the scheduled hearing. As a result, the respondent is in default. The attorney for the complainant moved for default at the hearing, and the motion was granted.

Revocation of the respondent's license has been recommended. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 485 (1969).

There is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on respondent or that he even has an interest in being rehabilitated. The practice of nursing is regulated in this state to protect the public health, safety and welfare. The respondent engaged in a ten year period of unlicensed practice, including a portion of that time as an assistant director of nursing. Upon applying to renew his credential he falsely indicated that he had been engaging in practice with an expired credential. In essence, he lied regarding his true employment status during his extended period of practice with an expired credential.

The respondent has not come forward to show an explanation for his conduct. He has not even responded to the complaint filed in this matter. Absent some mitigating evidence (of which none has been presented), imposing anything less than revocation would not aid in deterrence. To not revoke respondent's license would instead wrongly signal others to engage in similar conduct without consequence. Revocation remains as the only way in which to safeguard the public. By revoking the respondent's license the public will be adequately protected from any further misconduct by the respondent.

Dated: May 19, 2003

William Anderson Black

Administrative Law Judge

Department of Regulation and Licensing

P.O. Box 8935

Madison, WI 52708

**Telephone: (608) 266-1790**

FAX: (608) 267-0644