

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The  
State Of Wisconsin  
Board of Nursing

In the Matter of the Disciplinary Proceedings  
Against **DIANNE M. MAYR, R.N.**, Respondent

**FINAL DECISION AND ORDER**

Order No. \_\_\_\_\_

**ORDER 0001078**

Division of Enforcement Case No. 10 NUR 071

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, 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, Board of Nursing.

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 6<sup>th</sup> day of September, 2011.

Gretchen Lowe

Member  
Board of Nursing

(Signature)



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

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In the Matter of the Disciplinary Proceedings  
Against **DIANNE M. MAYR, R.N.**, Respondent

DHA Case No. DRL-11-0012

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Division of Enforcement Case No. 10 NUR 071

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

Dianne M. Mayr  
209 Lincoln Avenue, Apt. 1A  
Rio, WI 53960

Wisconsin Board of Nursing  
P. O. Box 8935  
Madison, WI 53708-8935

Department of Regulation and Licensing, Division of Enforcement, by

Attorney Jeanette Lytle  
Department of Regulation  
Division of Enforcement  
P. O. Box 8935  
Madison, WI 53708-8935

**PROCEDURAL HISTORY**

These proceedings were initiated when the Department of Regulation and Licensing, Division of Enforcement (the "Division") filed a formal Complaint against the Respondent, Dianne Mayr. The Division filed said Complaint with the Division of Hearings and Appeals on or about January 27, 2011. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing via both certified and regular mail to Respondent Mayr at her most recent address on file with the Department of Regulation and Licensing; 209 Lincoln Ave., Apt 1A, Rio, Wisconsin 53960. The Notice of Hearing stated that Respondent Mayr was required to file a written Answer to the Complaint within 20 days, failing which "[she would] be found to be in default and a default judgment [could] be entered against [her] on the basis of the Complaint and other evidence and the Wisconsin Board of Nursing [could] take disciplinary action against [her] and impose the costs of the investigation, prosecution and decision of this matter upon [her] without further notice or hearing."

To date, no Answer has been filed.

On February 18, 2011 the undersigned Administrative Law Judge (ALJ) of the Division of Hearings and Appeals issued a Notice of Telephone Prehearing Conference that set a telephone conference with Respondent Mayr and Attorney Jeanette Lytle of the Division of Enforcement for March 2, 2011. This Notice instructed Respondent Mayr to contact the undersigned ALJ to provide the telephone number for which she could be reached for the March 2, 2011, telephone conference, and was sent to the address on file for Respondent Mayr, as provided above.

Respondent Mayr did not contact the undersigned ALJ with a telephone number that she could be reached at for the March 2, 2011, telephone conference, and did not make herself available for the telephone conference that was to be conducted on that date.

In response, Attorney Lytle filed a motion for default pursuant to Wis. Admin. Code § RL 2.14 (March 8, 2011). Along with that motion, Attorney Lytle filed recommendations for discipline and for the imposition of costs. Said documents were mailed to Respondent Mayr at her last known address. (*See above*).

Respondent Mayr has failed to respond to either the Division's Motion for Default, or the written recommendations provided by Attorney Lytle on March 8, 2011.

On the above facts, the undersigned ALJ has granted Attorney Lytle's default motion and has issued a Notice of Default instructing Respondent Mayr that she is in default and that findings will be made and an Order entered on the basis of the Complaint and other evidence.

### **FINDINGS OF FACT**

On the evidence presented, the undersigned ALJ makes the following findings of fact:

1. Dianne M. Mayr, R.N., (D.O.B. 07/22/1955) is licensed as a professional nurse in the State of Wisconsin (license # 30-114017). This license was first granted on September 24, 1993.
2. Respondent's most recent address on file with the Wisconsin Board of Nursing is 209 Lincoln Ave. Apt. 1A, Rio, WI 53960.
3. On or about November 24, 2009, Respondent was providing home care to a disabled young man with a shunt and a bleeding disorder. During a transfer, the patient fell out of his hoyer swing to the floor.
4. Respondent did not report the incident, and instead took the child to school. Although she stayed with the child and monitored him at school, she did not report the fall to his foster mother until four hours later, when she noted he was sleepy.

5. The patient was diagnosed with a cranial bleed secondary to the fall.

6. Respondent no longer resides at the address on file with the Board of Nursing.

7. On or about February 18, 2011, the undersigned ALJ sent a Notice of Telephone Prehearing Conference for March 2, 2011, to Respondent at her most recent address on file with the Board of Nursing. (*See above.*).

8. Respondent did not make herself available for this conference.

9. On or about March 8, 2011, the Division filed a motion for default against Respondent. It was mailed to Respondent at her most recent address on file with the Board of Nursing. (*See above.*).

10. Respondent has not responded to this motion, or otherwise to the Compliant against her.

### **CONCLUSIONS OF LAW**

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. §§ 441.07 and 441.50(3)(b).

2. Wis. Stat. § 440.03(1) provides that the department [of Regulation and Licensing] 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. RL.

3. Wisconsin Administrative Code § RL 2.08(1) provides in relevant part that “[t]he complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent” and that “[s]ervice by mail is complete upon mailing.” Because the Complaint and Notice of Hearing, Notice of Telephone Prehearing Conference, and Motion for Default were mailed to Respondent at her last known address, she was duly served with these papers pursuant to Wis. Admin. Code § RL 2.08.

4. As the licensee, it was Respondent’s responsibility to keep her address on record with the Department of Regulation and Licensing current. Wis. Stat. § 440.11(1)<sup>1</sup>.

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<sup>1</sup> Wis. Stat. § 440.11(1) provides: “An applicant for or recipient of a credential who changes his or her name or moves from the last address provided to the department shall notify the department of his or her new name or address within 30 days of the change in writing or in accordance with other notification procedures approved by the department.”

5. Respondent has defaulted in this proceeding pursuant Wis. Admin. Code § RL 2.14 by failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § RL 2.09.

6. Allegations in a complaint are deemed admitted when not denied in an answer. Wis. Admin. Code § RL 2.09. Respondent has admitted to the allegations of the Complaint by default by not filing an Answer.

7. Pursuant to Wis. Stat. § 441.07(1)(c), the Board of Nursing has authority to “revoke, limit, suspend or deny renewal of a license of a registered nurse,” if the board finds that the registered nurse has committed “[a]cts which show the registered nurse, nurse-midwife or licensed practical nurse to be unfit or incompetent by reason of negligence....”

8. Wis. Admin. Code § N 703(1) defines “negligence” as “a substantial departure from the standard of care ordinarily exercised by a competent licensee.”

9. Wis. Admin. Code § N 703(c) further defines negligence to include “[f]ailing to observe the conditions, signs and symptoms of a patient, record them, or report significant changes to the appropriate person.” (Emphasis added).

10. Respondent Mayr’s conduct, as described in Findings of Fact ¶¶ 3-5, constitutes negligence contrary to Wis. Stat. § 441.07(1)(c), and Wis. Admin. Code §§ N 7.03(1) and N 7.03(1)(c). She is thus subject to discipline pursuant to 441.07(1)(c).

## **DISCUSSION**

### **Violations of Wisconsin Statute and Administrative Code**

By failing to provide an Answer to the Complaint filed against her, Respondent Mayr has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that: (1) Respondent Mayr dropped a disabled patient during a transfer and did not report this occurrence until several hours later, when said patient began to present adverse symptoms (sleepiness); and (2) said patient suffered a cranial bleed secondary to the fall. The former conduct clearly violates Wis. Admin. Code §§ N. 7.03(1)(c), which defines negligence to include failing to record or report conditions, signs, symptoms, and significant changes of a patient to the appropriate person. Respondent Mayr is thus subject to discipline pursuant to Wis. Stat. § 441.07(1)(c). The only question that remains is what kind of discipline is appropriate.

### **Appropriate Discipline**

As discipline for her above conduct, the Division requests that Respondent Mayr’s license to practice nursing be suspended for an indefinite period of time. The Division notes that if Respondent Mayr had participated in these proceedings, it likely would have offered her a resolution that

involved a reprimand, continuing education, and work restrictions requiring supervision, work reports, and no home health practice. However, because of her failure to respond, it believes a indefinite suspension is necessary, so long as it includes a provision that allows Respondent to petition the board to stay or lift her suspension at any time, and it allows the board, if it chooses to stay or lift Respondent's suspension, to do so with conditions comparable to those described above.

(Division's March 8, 2011, Recommendations for Discipline and the Imposition of Costs).

Under the circumstances of this case, the undersigned ALJ believes the discipline recommended by the Division is appropriate.

Indeed, the purpose of discipline is to: (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 contact. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Respondent Mayr's conduct in failing to report a disabled patient's significant fall until he began to demonstrate adverse symptoms shows that she is very much a danger to the public, and cannot be tolerated in a profession dedicated to caring for others. Her failure to participate in these proceedings in any way shows that she has yet to be rehabilitated. The relief requested by the Division is thus appropriate and even necessary to protect the public from future instances of misconduct by the respondent.

#### Costs

The Division requests that Respondent Mayr be ordered to pay the full costs of its investigation and of these proceedings.

In *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), the Chiropractic Examining Board found that:

The ALJ's recommendation and the ... Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder..., is based on the consideration of several factors, including:

- 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 parties
- 4) The respondents cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing 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;
- 7) Any other relevant circumstances.

The respondent, by nature of her being in default has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. To the contrary, her conduct is of a serious nature. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven (being none), or that certain factual findings were investigated and litigated that were unnecessary. Given the fact that the Department of Regulation and Licensing is a "program revenue," agency, whose operating costs are funded by the revenue received for licensees, fairness here dictates imposing the costs of disciplining the respondent upon the respondent and not fellow members of the chiropractic profession who have not engaged in such conduct."

For many of the same reasons as cited in the *Buenzli-Fritz* decision, Respondent Mayr should be assessed the full amount of recoverable costs. Her alleged conduct is of a serious nature, there is no argument that certain factual findings were investigated and litigated unnecessarily, and given the program revenue nature of the Department of Regulation and Licensing, fairness again dictates imposing the costs of disciplining Respondent Mayr on Respondent Mayr, and not fellow members of the nursing profession who have not engaged in such conduct. Payment of assessed costs will be necessary before the respondent's license can be reinstated pursuant to Wis. Stat. § 441.07(2).

### **ORDER**

For the reasons set forth above, IT IS ORDERED that the license of the Respondent Dianne M. Mayr, R.N. to practice nursing in the State of Wisconsin be and is hereby **SUSPENDED FOR AN INDEFINITE PERIOD OF TIME**.

Respondent Mayr may petition the board to stay or lift the suspension at any time. If the board agrees to lift or stay Respondent's suspension, it may do so subject to conditions, including, but not limited to: reprimand, continuing education, and work restrictions requiring supervision, work reports, and home health practice.

IT IS FURTHER ORDERED that Respondent Mayr shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. After the amount is established payment shall be made by certified check or money order payable to the Wisconsin Department of Regulation and Licensing and sent to:

**Department Monitor  
Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935  
Telephone: (608) 267-3817  
Fax: (608) 266-2264**




IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Dianne M. Mayr.

Dated at Madison, Wisconsin on May 13, 2011.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

By:

  
Amanda Tollefsen  
Administrative Law Judge

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