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Before The  
State Of Wisconsin  
BOARD OF NURSING

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In the Matter of the Disciplinary Proceedings  
Against MICHELLE J. EAGLE, R.N.,  
Respondent

FINAL DECISION AND ORDER

Order No.  
ORDER 0002529

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**Division of Legal Services and Compliance Case No. 11 NUR 624**

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 11 day of July, 2013.

Julie Nelson, RN  
Member  
Board of Nursing



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

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In the Matter of the Disciplinary Proceedings  
Against **MICHELLE J. EAGLE, R.N.**,  
Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. SPS-13-0013

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**Division of Legal Services and Compliance Case No. 11 NUR 624**

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

Michelle J. Eagle, R.N.  
P.O. Box 1806  
Waukesha, WI 53188

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

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

Attorney Aaron A. Konkol  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P. O. Box 8935  
Madison, WI 53708-8935

**PROCEDURAL SUMMARY**

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Michelle J. Eagle, R.N. (Respondent), alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 441.07(1)(c), and (d), Wis. Admin. Code §§ N 7.03(1) and N 7.04. The Division served Respondent on February 19, 2013 by sending a copy of the Notice of Hearing and Complaint to her last known address.

The administrative law judge (ALJ) held a telephone prehearing conference on April 10, 2013. The Respondent failed to appear at that conference; therefore, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c) and stated that it would file a recommended proposed decision within two weeks. On April 25, 2013, the Division filed its recommended proposed decision.

## **FINDINGS OF FACT**

### **Facts Related to the Alleged Violation**

Findings of Fact 1-6 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Michelle J. Eagle, R.N., was born on March 20, 1954 and is licensed to practice as a professional nurse in the State of Wisconsin, having license no. 136789-30, first issued on November 16, 2000 and current through February 28, 2014.

2. Respondent's most recent address on file with the Wisconsin Board of Nursing (Board) is P.O. Box 1806, Waukesha, Wisconsin 53188.

3. At all times relevant to this proceeding, Respondent was employed as a professional nurse at a nursing home located in Elm Grove, Wisconsin.

4. Beginning April 13, 2011, Fairview Senior Homes received ongoing reports of incidents alleging that Respondent failed to respond to calls regarding ill or injured residents. These incidents include, but are not limited to:

- a. On February 25, April 13, April 14, May 1, July 14, and July 18, 2011, staff attempted to reach Respondent regarding changes in several residents' health status, including hospital discharge, a fall, vomiting, and chest pain. Respondent did not respond or return staff's calls.
- b. On July 15, July 19 and July 22, 2011, Respondent was notified of serious health concerns regarding a resident's fall which was later diagnosed as a left rib fracture and hematoma on the left thigh. Another resident had symptoms and signs of stroke. Respondent failed to timely assess the residents.
- c. On July 22, 2011, Respondent ordered medication without a physician's order, inaccurately charted an assessment, failed to correct the charting, and reported incorrect information to a resident's family.

5. On July 27, 2011, Fairview administrators found pornographic activities of Respondent stored on her work computer, which were posted on the internet site "Fetlife" and marked as a favorite.

6. On July 29, 2011, Respondent was terminated from her employment.

### **Facts Related to Default**

7. On February 19, 2013, the Division served Respondent with the Notice of Hearing and Complaint, via certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08.

8. On March 25, 2013, the Division of Hearings and Appeals (DHA) was informed by the Department that the address on file for Respondent, her P.O. Box, was no longer valid and that the Department did not have a more current address for Respondent.

9. Following expiration of the 20-day time period in which to file an Answer, the ALJ scheduled a telephone prehearing conference for April 10, 2013. The March 26, 2013 Notice of Telephone Prehearing Conference was sent to Respondent at her last known address on March 27, 2013. On that same date, it was also sent to Respondent at her email address on file with the Department. The Notice instructed Respondent to provide the ALJ with a telephone number at which she could be reached for the conference no later than April 5, 2013. The Notice further informed Respondent: **“A respondent’s failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent.”**

10. On April 1, 2013, the Notice was returned to DHA, with notations indicating that the P.O. Box was closed and that the mail was unable to be forwarded. Respondent did not respond to the email and did not provide a telephone number at which she could be reached for the April 10, 2013 prehearing conference.

11. At the April 10, 2013 prehearing conference, the ALJ attempted to reach Respondent at the telephone numbers the Division provided. However, one telephone number was not in service and the other number was for an employer for whom Respondent no longer worked.

12. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). The ALJ ordered the Division to serve no later than April 24, 2013 its recommended proposed decision. On April 23, 2013, the Division emailed to DHA and Respondent its recommended Proposed Decision and Order, including its recommendations regarding discipline and costs. On April 25, 2013, the Division filed a hard copy of the same with DHA and served a copy on Respondent. Respondent did not respond to either the Division’s email or to the Division’s mailed submission.

### **Facts Related to Prior Disciplinary Proceedings Involving Respondent**

13. In 2003, Respondent received an Administrative Warning from the Board. *See In the Matter of Disciplinary Proceedings Against Michelle J. Eagle, R.N.*, LS0711087NUR, Finding of Fact No. 1 (November 8, 2007) (Affidavit of Aaron A. Konkol, Exhibit B).

14. In 2007, Respondent was reprimanded by the Board and limitations were placed on her license due to her acts of negligence and misconduct or unprofessional conduct. *See In the Matter of Disciplinary Proceedings Against Michelle J. Eagle, R.N.*, LS0711087NUR (November 8, 2007) (Affidavit of Aaron A. Konkol, Exhibit B). The specific conduct alleged was that she took medications from her employer rather than destroying them and then lied to law enforcement about how she obtained the medications. *Id.*

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **Default and Violation of Wis. Stat. § 441.07 (1)(d)**

Wisconsin Admin. Code § HA 1.07(3) provides, in relevant part:

(3) FAILURE TO APPEAR.

...

(b) If a Respondent fails to appear, the administrative law judge may. . .

take the allegations in an appeal as true as may be appropriate. . .

(c) For a telephone or video hearing or prehearing the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: (1) The failure to provide a telephone number to the division after it had been requested; (2) the failure to answer the telephone or videoconference line;. . . (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

Likewise, Wis. Admin. Code § SPS 2.14 states that a failure to appear results in default. Pursuant to Wis. Admin. Code §§ HA 1.07(3) and SPS 2.14, Respondent is in default for failing to provide a telephone number after it had been requested, failing to answer the telephone and failing to be ready to proceed with the prehearing conference as scheduled.

Accordingly, Respondent has admitted to the allegations of the Complaint. It is therefore undisputed that on April 13, 2011, while Respondent was working as a professional nurse in Elm Grove, WI, the facility received ongoing reports of incidents alleging that Respondent failed to respond to calls regarding ill or injured residents as follows:

- On February 25, April 13, April 14, May 1, July 14 and July 18, 2011, staff attempted to reach Respondent regarding changes in several residents' health status, including hospital discharge, a fall, vomiting, and chest pain. Respondent did not respond or return staff's calls.
- On July 15, July 19 and July 22, 2011, Respondent was notified of serious health concerns regarding a resident's fall which was later diagnosed as a left rib fracture and hematoma on the left thigh. Another resident had symptoms and signs of stroke. Respondent failed to timely assess the residents.
- On July 22, 2011, Respondent ordered medication without a physician's order, inaccurately charted an assessment, failed to correct the charting, and reported incorrect information to a resident's family.

It is also undisputed that on July 27, 2011, nursing home administrators found pornographic images of Respondent stored on her work computer, which were posted on the internet site "Fetlife" and marked as a favorite. Moreover, on July 29, 2011, Respondent's employment at the nursing home was terminated.

Wisconsin Stat. § 441.07(1) provides that the Board may "revoke, limit, suspend or deny renewal of a license of a registered nurse . . . or may reprimand a registered nurse. . . the board finds that the person committed . . . (c) Acts which show the registered nurse . . . to be unfit or incompetent by reason of negligence . . . [or] (d) Misconduct or unprofessional conduct."

Wisconsin Admin. Code § N 7.03(1) states that "negligence means a substantial departure for the standard of care ordinarily exercised by a competent licensee." Based on the undisputed evidence, Respondent was negligent as defined in Wis. Admin. Code § N 7.03(1) by failing to keep nursing staff apprised of residents' health statuses, failing to assess residents, and failing to chart accurately, as set forth above.

The Division also asserts that Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code § N 7.04 by possessing pornographic activities while on duty as a nurse

and on a computer intended for use in provision of health care services. Wisconsin Admin. Code § N 7.04 defines “misconduct or unprofessional conduct” as “any practice or behavior which violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public.” The rule further delineates certain examples of misconduct or unprofessional conduct, none of which are applicable here.

While there is no doubt that Respondent’s possession of pornographic images of herself on her work computer was highly inappropriate and, as stated by the Division, “constitute[d] gross deficits in professional judgment” (Division’s recommended Proposed Decision and Order, p. 5), it cannot be concluded as a matter of law that this conduct, in and of itself, jeopardized the health, safety or welfare of a patient or the public, as required by Wis. Admin. Code § N 7.04. The Division states that the pornographic images of Respondent on her work computer “establish that her patients were not her first priority.” (Division’s recommended Proposed Decision and Order, p. 5) However, there are no facts in the record to support that claim. Based on the foregoing, the Division has not established that this conduct constituted unprofessional conduct as that phrase is specifically defined in Wis. Admin. Code § N. 7.04.<sup>1</sup>

Nevertheless, because Respondent has committed negligence in violation of Wis. Stat. §441.07(1)(c) and Wis. Admin. Code § N 7.03(1), she is subject to discipline pursuant to Wis. Stat. § 441.07(1).

### **Appropriate Discipline**

Pursuant to Wis. Stat. § 441.07, the Board has the authority to impose discipline in this matter. The three purposes of discipline are: (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 conduct. *See State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976).

The Division requests that Respondent’s license be revoked. Under the circumstances of this case and considering Respondent’s prior discipline and her failure to participate in these proceedings, such discipline is warranted.

Clearly, Respondent’s actions constitute negligence as defined by the Board of Nursing Code. Respondent’s conduct is below the standard of minimal competence within the profession and warrants significant discipline. The residents for whom the Respondent was responsible are among the most vulnerable. Failing to respond to phone calls from the facility inquiring about the status of residents is below professional standards and created the unacceptable risk that residents would not be treated, that their conditions would unnecessarily deteriorate, and that physician orders would not be followed.

Respondent’s incompetent practice was not the result of a momentary lapse and appears to have been intentional. Any minimally competent nurse understands the need to assess residents after falls; any minimally competent nurse understands that medications cannot be

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<sup>1</sup>Although Respondent’s failures to keep nursing staff apprised of residents’ health statuses, to assess residents and to chart accurately might also constitute “unprofessional conduct” as defined in Wis. Admin. Code § N 7.04, the Division did not allege this specific violation for this conduct in its Complaint or in its recommended Proposed Decision and Order. Therefore, it is not addressed in this decision.

administered without a physician's orders. Respondent's repeated failures are evidence of intentional conduct, with utter disregard for her patients. Respondent's conduct makes it clear that her practice is unsafe and that she creates an unreasonable risk to current and future patients.

Despite past discipline for incompetent practice, Respondent has been unable or unwilling to conform her practice to the minimum standards of competence. Her continued substandard practice, along with her prior discipline and disregard of these proceedings, demonstrate that Respondent has not been rehabilitated and needs appropriate discipline to address this conduct. Most importantly, the fact that she repeatedly left her patients in harm's way makes significant discipline necessary to protect health care consumers. There is a need to send a strong message to other licensees to deter them from engaging in similar conduct.

Revocation of the Respondent's license to practice in Wisconsin is appropriate in this matter as it best promotes the three purposes of discipline – rehabilitation, deterrence and protection of the public.

### **Costs**

The Board has the authority to assess costs pursuant to Wis. Stat. § 440.22. The factors to be considered in assessing costs are: (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 of [Safety and Professional Services] 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; and (7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, LS0802183CHI (Aug. 14, 2008).

The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings. The Division states that it offered Respondent a stipulation to resolve the complaint and that because Respondent did not accept the stipulation, the Division was compelled to file a formal disciplinary Complaint. Once the formal disciplinary Complaint was filed, Respondent failed to respond to any further contact from the Division. Respondent also failed to participate in the prehearing conference with the ALJ.

Moreover, Respondent has admitted the conduct as set forth in the Division's Complaint, and the conduct involved is serious. In addition, as noted above, Respondent has been the subject of disciplinary proceedings twice before. Finally, it would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Accordingly, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings.

### **ORDER**

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

1. Respondent's license to practice as a practical nurse in the State of Wisconsin is hereby REVOKED.



2. Respondent shall pay 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:


**Department Monitor  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 8935  
Madison, WI 53708-8935**

3. The ordered terms of this decision are effective the date the Board signs the Final Decision and Order in this matter.

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Michelle J. Eagle.

Dated at Madison, Wisconsin on April 26, 2013.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
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By:   
Jennifer E. Nashold  
Administrative Law Judge