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Before The
State Of Wisconsin
BOARD OF NURSING

In the Matter of the Disciplinary Proceedings
Against **TRACY L. WATSON, L.P.N.**,
Respondent

FINAL DECISION AND ORDER
Order No. **0003221**

Division of Legal Services and Compliance Case No. 12 NUR 174

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 8th day of May, 2014.

Julia Nelson, RN
Member
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **TRACY L. WATSON, L.P.N.**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-14-0003
0003221

Division of Legal Services and Compliance Case No. 12 NUR 174

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

Tracy L. Watson, L.P.N.
2331 South 90th Street #3
West Allis, WI 53227

Wisconsin Board of Nursing
P.O. Box 8366
Madison, WI 53708-8366

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

Attorney Kim M. Kluck
Department of Safety and Professional Services
Division of Legal Services and Compliance
P. O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Tracy L. Watson, L.P.N., alleging that Respondent engaged in unprofessional conduct as defined in Wis. Admin. Code § N 7.04(7), by having disciplinary action taken against her license by the Arizona Board of Nursing. The Division served Respondent on January 17, 2014, by sending a copy of the Notice of Hearing and Complaint to her last known address. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09, and failed to appear at the prehearing telephonic conference held before the Division of Hearings and Appeals on February 20, 2014.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to make herself available, the undersigned Administrative Law Judge

(ALJ) found Respondent to be in default. On February 20, 2014, the ALJ issued a Notice of Default against Respondent. Consistent with the Notice of Default issued by the ALJ, the Division filed a written recommendation for discipline and costs to be imposed on Respondent.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of Fact 1-7 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Tracy L. Watson, L.P.N., (DOB March 10, 1974) is licensed in the state of Wisconsin as a practical nurse, having license number 306701-31, first issued on November 18, 2005. This license expired on April 30, 2013, and has not been renewed. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew the license upon payment of a fee until April 30, 2018.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 2331 South 90th Street, #3, West Allis, Wisconsin 53227.

3. Pursuant to Wis. Stat. § 441.50, Wisconsin and Texas are party states of the multi-state Nurse Licensure Compact, which provides for multi-state licensure privileges and allows a nurse with a license from a "home state" to engage in the practice of nursing in all other party states, which are called "remote states."

4. Respondent was practicing in Arizona pursuant to the Nurse Licensure Compact privilege to practice.

5. On January 24, 2012, the Arizona Board of Nursing (Arizona Board) issued a Findings of Fact, Conclusions of Law and Order against Respondent revoking Respondent's license to practice as a practical nurse.

6. The Arizona Order was based on Respondent's unprofessional conduct between 2007 and 2009, including the following:

- a. Respondent provided inaccurate information about patients;
- b. Respondent made inflammatory statements to nursing staff;
- c. Respondent failed to complete incident reports;
- d. Respondent removed a resident's medical records from a facility; and
- e. Respondent had numerous personal issues with various nursing employers.

The Arizona Board further found that this conduct constituted a violation of its rules relating to unprofessional conduct. It imposed discipline by revoking her practical nursing license.

Facts Related to Default

7. The Complaint and Notice of Hearing in this matter were served on Respondent on January 17, 2014, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing informed Respondent: “If you do not provide a proper Answer within twenty (20) days, you will be found to be in default, and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.”

8. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

9. Following expiration of the twenty (20)-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for February 20, 2014. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the telephone number at which she could be reached for the conference to the ALJ no later than February 17, 2014. 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. Respondent failed to provide a telephone number and could not be reached for the prehearing conference.

11. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

12. On February 20, 2014, the ALJ issued a Notice of Default and Order which concluded that Respondent was in default and required the Division to serve no later than February 28, 2014 a recommended proposed decision and order.

13. The Division filed its recommended proposed decision and order on February 21, 2014. Respondent did not file a response.

CONCLUSIONS OF LAW AND DISCUSSION

Default

Wisconsin Admin. Code § SPS 2.14 provides: “If the 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.” An Answer to a Complaint must be filed within 20 days of service of the Complaint. *See* Wis. Admin. Code § SPS 2.09(4). Service of the Complaint may be made by mailing a copy of the Complaint to the respondent at the respondent’s last known address. *See* Wis. Stat. § 440.11(2); Wis. Admin. Code § SPS 2.08(1). “Service by mail is complete upon mailing.” Wis. Admin. Code § SPS 2.08(1). Further, Wis. Admin. Code § HA 1.07(3) states, 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 video conference line . . . (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

On January 17, 2014, the Division duly served Respondent with the Complaint by mailing a copy of the Notice of Hearing and Complaint by both regular and certified mail to her most recent address on file with the Department. Pursuant to Wis. Admin. Code §§ SPS 2.08(1) and 2.09(4), Respondent was required to file an Answer within 20 days but failed to do so. She also failed to appear at the telephone prehearing conference held on February 20, 2014 and failed to provide a telephone number at which she could be reached for the conference.

As stated in the February 20, 2014 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint, failing to appear at the prehearing conference held on February 20, 2014, and failing to provide a telephone number at which she could be reached for the conference. Accordingly, an order may be entered against her on the basis of the Complaint and other evidence. Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violations of Wisconsin Statute and Administrative Code

Following an investigation and disciplinary hearing, if the Board determines that a practical nurse is guilty of unprofessional conduct, it may “revoke, limit, suspend, or deny renewal of a license of a practical nurse” if that nurse committed one or more violations of any rule adopted by the Board or committed misconduct or unprofessional conduct. Wis. Stat. § 441.07(1)(b) and (d) (2011-2012).

The phrase “unprofessional conduct” as used in Wis. Stat. § 441.07(1)(d) means “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,” and includes “[h]aving disciplinary action through final board adjudication taken against one's license in another jurisdiction.” Wis. Admin. Code § N 7.04(7).

The undisputed allegations in the Complaint are that on January 24, 2012, the Arizona Board issued an order against Respondent revoking Respondent's license to practice as a practical nurse, based on its conclusion that Respondent engaged in unprofessional conduct. This conduct included providing inaccurate information about patients; making inflammatory statements to nursing staff; failing to complete incident reports; removing a resident's medical records from a facility; and having numerous personal issues with various nursing employers.

By having disciplinary action taken against her license in another jurisdiction by the Arizona Board, Respondent engaged in unprofessional conduct, and disciplinary action may be

taken against her pursuant to Wis. Admin. Code § N 7.04(7) and Wis. Stat. § 441.01(1)(b) and (d).

Appropriate Discipline

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. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent's practical nursing license, including the right to renew, be indefinitely suspended and that her privilege to practice as a nurse in the state of Wisconsin under the authority of another state's license pursuant to the Nurse Licensure Compact also be indefinitely suspended.

The discipline recommended by the Division is warranted. First, the recommended discipline best promotes the disciplinary objectives set forth in *Aldrich*. Respondent is in need of rehabilitation, as evidenced by her misconduct in Arizona, which included providing inaccurate information about patients, and by her lack of participation in the proceeding before this tribunal. The public must be protected from Respondent's misconduct and other licensees must be deterred from engaging in such acts.

Moreover, the discipline recommended by the Division is consistent with the Arizona Board's decision revoking Respondent's license and is also consistent with prior discipline imposed by the Board for similar conduct.¹ In *In the Matter of Disciplinary Proceedings Against Melinda J. Juleen, L.P.N.*, Case No. LS0910061NUR (March 25, 2010), the Board found that the credential holder provided false information on a patient's medical record. As in this case, the credential holder in *Juleen* was also found to be in default. The Board imposed an indefinite suspension of the credential holder's license and the credential holder was ordered to pay all costs of the Department's investigation. (A copy of the *Juleen* decision may be found at <http://online.drl.wi.gov/decisions/2010/LS0910061NUR-00113349.pdf>.)

In *In the Matter of Disciplinary Proceedings Against Nicole S. Burkheimer, R.N.*, Case No. 0000019 (Jan. 28, 2010), the Board suspended the credential of a license holder for six months where there was a finding that the credential holder provided false information on patient medical records. In addition to the suspension, the Board applied the following limitations: continuing education requirements; a prohibition on working in home health, nursing care or for a nursing agency service; a requirement that the credential holder submit quarterly reports; and a requirement that the credential holder provide a copy of the order to all nursing employers. (A copy of the *Burkheimer* decision may be found at <http://online.drl.wi.gov/decisions/2010/order0000019-00004116.pdf>.) Unlike in the instant case, in *Burkheimer*, the credential holder was not in default but actually participated in the disciplinary proceedings against her, entering into a stipulation with the Department which was approved by the Board.

¹ The Division mistakenly states that the prior cases discussed herein involved situations "where licensees received disciplinary action against their licenses in another jurisdiction." (Division's Recommended Proposed Decision and Order, p. 5) Although these cases do not involve disciplinary actions in other jurisdictions, they are nonetheless instructive.

Based on the foregoing, it is appropriate to indefinitely suspend Respondent's license, including the right to renew her license, and to also indefinitely suspend Respondent's privilege to practice as a nurse in the state of Wisconsin under the authority of another state's license pursuant to the Nurse Licensure Compact.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. The Division requests that Respondent be ordered to pay the full costs of this investigation and of these proceedings. 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 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).

Based on the factors delineated in the *Buenzli-Fritz* decision and the facts of this case, Respondent should be assessed the full amount of recoverable costs in this case.

ORDER

Accordingly, IT IS HEREBY ORDERED:

1. The practical nursing license issued to Respondent Tracy L. Watson, L.P.N. (license number 306701-31), and the right to renew that license, are INDEFINITELY SUSPENDED.
2. The privilege of Respondent to practice as a nurse in the state of Wisconsin under the authority of another state's license pursuant to the Nurse Licensure Compact is also INDEFINITELY SUSPENDED.
3. Respondent may petition the Board for re-licensure or for renewal of her license. However, the Board may enter an order denying such a petition without further notice or hearing. Whether to grant or renew a license and whether to impose any limitations or restrictions on any license granted or renewed shall be in the sole discretion of the Board. In addition, Respondent may petition for modification of this Order and it shall be in the sole discretion of the Board whether to modify this Order and, if modified, to impose any additional limitations.
4. 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:

**Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance**

**P.O. Box 7190
Madison, WI 53707-7190**

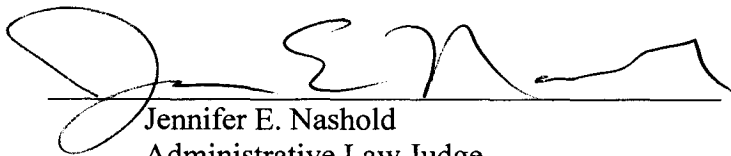
5. The terms of this Order are effective the date the Final Decision and Order is signed by the Board.

IT IS FURTHER ORDERED that the above-captioned matter is hereby closed as to Respondent Tracy L. Watson, L.P.N.

Dated at Madison, Wisconsin on March 27, 2014.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
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By:



Jennifer E. Nashold
Administrative Law Judge