

## 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 **VICKI L. HARRIS, R.N.**, Respondent

FINAL DECISION AND ORDER  
Order No. **0003227**

**Division of Legal Services and Compliance Case No. 12 NUR 300**

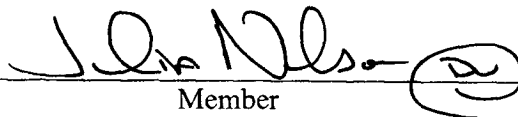
The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 16<sup>th</sup> day of May, 20 14.



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 **VICKI L. HARRIS, R.N.**, Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. SPS-13-0044

**0003227**

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**Division of Legal Services and Compliance Case No. 12 NUR 300**

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

Vicki L. Harris, R.N.  
9002 Sheridan Road, Lot #111  
Kenosha, WI 53143

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 Kim M. Kluck  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P. O. Box 8935  
Madison, WI 53708-8935

**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 Vicki L. Harris, R.N., alleging that Respondent engaged in misconduct or unprofessional conduct as defined in Wis. Admin. Code § N 7.04(7) by having disciplinary action taken against her license in another jurisdiction by the Nevada State Board of Nursing. The Division served Respondent on September 17, 2013 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 telephone prehearing conference held before the Division of Hearings and Appeals on October 21, 2013.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c), respectively. In light of Respondent's failure to file an Answer to

the Complaint and failure to appear, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default. On October 21, 2013, the ALJ issued a Notice of Default against Respondent. Consistent with the Notice of Default, the Division filed a recommended proposed decision and order on November 1, 2013. Respondent did not file a response to either the Notice of Default or to the Division's subsequent submission.

## **FINDINGS OF FACT**

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

Findings of Fact 1-4 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Vicki L. Harris, R.N. (dob July 28, 1956) is licensed in the State of Wisconsin as a professional nurse, having license number 85582-30, first issued on September 1, 1983 and current through February 28, 2014.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 9002 Sheridan Road, Lot #111, Kenosha, Wisconsin 53143.

3. On May 24, 2012, the Nevada State Board of Nursing (Nevada Board) found that:

- a. On or about December 19, 2011, Respondent was terminated from her employment as a nurse.
- b. Respondent was terminated due to numerous patient care issues, including:
  - i. Failing to administer medications appropriately;
  - ii. Failing to follow facility policies related to patient care;
  - iii. Failing to observe and report patient changes;
  - iv. Failing to carry out physician orders in a timely manner; and
  - v. Failing to document patient care.

4. The Nevada Board further found that this conduct constituted a violation of its rules relating to unprofessional conduct and customary standards of care. It imposed discipline against her license which included placing her license on probation with an Active/Restricted licensure status for a minimum of one (1) year. The conditions of probation included, but were not limited to, 60 hours of continuing education in legal ethics and nursing, limitations on employment and monthly reports to the Nevada Board.

### **Facts Related to Default**

5. The Complaint and Notice of Hearing in this matter was served on Respondent on September 17, 2013, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing stated that Respondent was required to file an Answer to the Complaint within 20 days and advised Respondent: "If you do not provide a proper Answer within 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."

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

7. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for October 21, 2013. 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 October 16, 2013. The Notice instructed Respondent: "A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being ordered against the respondent."

8. Respondent failed to provide a telephone number and could not be reached for the prehearing conference.

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

10. On October 21, 2013, the ALJ issued a Notice of Default and Order which ordered the Division to serve no later than November 1, 2013 a recommended proposed decision and order.

11. The Division timely filed its recommended proposed decision and order.

### **DISCUSSION AND CONCLUSIONS OF LAW**

#### **Default and Violation of Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(7)**

Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the prehearing conference held on October 21, 2013. 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." Wisconsin 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.

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). On September 17, 2013, the Division 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.

Because Respondent is in default for her failure to file an Answer and to appear at the prehearing conference, an order may be entered against her on the basis of the Complaint and other evidence. The Complaint establishes that Respondent had disciplinary action taken against her license in another jurisdiction by the Nevada State Board of Nursing.

Wisconsin Stat. § 441.07(1)(d) provides that the Board may "revoke, limit, suspend or deny renewal of a license of a registered nurse . . . , or may reprimand a registered nurse . . . if the board finds that the person committed . . . [m]isconduct or unprofessional conduct." The phrase "misconduct unprofessional conduct" as used in Wis. Stat. § 441.07(1)(d) is defined as "[a]ny 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).

Respondent, by having disciplinary action taken against her license in another jurisdiction by the Nevada State Board of Nursing, engaged in misconduct or unprofessional conduct pursuant to Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(7). She is therefore subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

### **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 license be suspended for an indefinite period with various conditions. Most of the conditions recommended by the Division are related to treatment for alcohol or drug abuse. The Division also cites two prior Board cases involving substance abuse issues, *In the Matter of Disciplinary Proceedings Against Brian J. Reynolds*,

R.N., Order No. 0002520 (July 11, 2013) and *In the Matter of the Application of Registered Nurse License for Shannon L. Deptula, R.N.* (January 26, 2006).<sup>1</sup>

The record in this case is completely devoid of any indication that Respondent had issues of alcohol or drug abuse. Because the Division has not provided any information in support of its recommendation for alcohol or drug treatment, there is no basis in this record for imposing such requirements, and the cases relied on by the Division are not relevant.

Based on the facts presented in this case and the factors set forth in *Aldrich*, it is appropriate to impose discipline similar to that imposed by the Nevada Board which, according to the Division's Complaint in this case, involved placing Respondent's license on probation with an Active/Restricted licensure status for a minimum of one year with conditions of probation, including 60 hours of continuing education in legal ethics and nursing, limitations on employment, and monthly reports to the Nevada Board. In the instant case, similar discipline is imposed, as set forth in more detail in the Order section below, with an indefinite suspension imposed rather than a probationary license.

### Costs

The Board 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 its 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, Respondent should be assessed the full amount of recoverable costs in this case.

### ORDER

ACCORDINGLY, IT IS HEREBY ORDERED:

#### SUSPENSION

- A.1. The license of Vicki L. Harris, R.N., (license number 85582-30), to practice as a nurse in the State of Wisconsin is SUSPENDED for an indefinite period.

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<sup>1</sup> No case number appears on the decision.

- A.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 SUSPENDED for an indefinite period.
- A.3. During the pendency of this Order and any subsequent related orders, Respondent may not practice in another state pursuant to the Nurse Licensure Compact under the authority of a Wisconsin license, unless Respondent receives prior written authorization to do so from both the Wisconsin Board of Nursing and the regulatory board in the other state.
- A.4. Respondent shall mail or physically deliver all indicia of Wisconsin nursing licensure to the Department Monitor within 14 days of the effective date of this order. Limited credentials can be printed from the Department website at <http://dsps.wi.gov/index.htm>.
- A.5. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active nursing for every year the suspension is stayed, the Board may grant a petition by the Respondent under paragraph D.6. for return of full Wisconsin licensure. The Board may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time.

#### STAY OF SUSPENSION

- B.1. The suspension of Respondent's Wisconsin nursing license may be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Respondent is in compliance with the provisions of this Order.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of this Order. The Board may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
  - (a) Mailing to Respondent's last-known address provided to the Department pursuant to Wis. Stat. § 440.11; or
  - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. SPS 2. The hearing shall be held in a



timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

#### CONDITIONS AND LIMITATIONS

- C.1. Within 6 months of issuance of the Final Decision and Order in this matter, Respondent shall complete 60 hours of continuing education in legal ethics and nursing.
- C.2. If Respondent's license suspension is stayed:
- (a) Respondent shall practice only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee.
  - (b) Respondent shall practice only in a work setting pre-approved by the Board or its designee.
  - (c) Respondent may not work in a home health care, hospice, pool nursing, assisted living, or agency setting.
  - (d) Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a nurse or care giver or provides health care, currently or in the future.
  - (e) It is Respondent's responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a monthly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active nursing practice worked during that month. If a report indicates poor performance, the Board may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion.
  - (f) Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

#### MISCELLANEOUS

##### Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor  
Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 8935, Madison, WI 53708-8935  
Telephone (608) 267-3817; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

Petitions for Modification of Limitations or Termination of Order

- D.2. Respondent may petition the Board on an annual basis for modification of the terms of this Order; however, no such petition for modification shall occur earlier than one year from the date of the initial stay of the suspension. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.
- D.6. Respondent may petition the Board for termination of this Order any time after five years from the date of the initial stay of the suspension. However, no petition for termination shall be considered without a showing of continuous, successful compliance with the terms of the Order, for at least five years.

IT IS FURTHER ORDERED that 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 8935  
Madison, WI 53708-8935  
Telephone: (608) 267-3817  
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that 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 be and hereby is closed as to Respondent Vicki L. Harris, R.N.

Dated at Madison, Wisconsin on this 13th day of November, 2013.

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

By: 

Jennifer Nashold  
Administrative Law Judge