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Before the
State Of Wisconsin
Medical Examining Board

In the Matter of the Disciplinary Proceedings
Against Linda R. Rogow, M.D., Respondent

FINAL DECISION AND ORDER

Order No. 0003411

Division of Legal Services and Compliance Case No. 14 MED 033

The State of Wisconsin, Medical Examining Board, 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, Medical Examining Board.

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 18th day of March, 2015.

A handwritten signature in black ink, appearing to read "K. B. Smith", written over a horizontal line.

Member
Medical Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against Linda R. Rogow, Respondent

DHA Case No. SPS-14-0100
DLSC Case No. 14 MED 033

PROPOSED DECISION AND ORDER

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

Linda R. Rogow, M.D.
2455 W. Silver Springs Drive, #304
Glendale, WI 53209

Wisconsin Medical Examining Board
P.O. Box 8366
Madison, WI 53708-8366

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

Attorney Joost Kap
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 Linda R. Rogow, alleging that Respondent engaged in unprofessional conduct pursuant to Wis. Admin Code § Med 10.03(1)(a) by violating any provision, condition or term of a valid rule or order of the Wisconsin Medical Examining Board, and was therefore subject to discipline pursuant to Wis. Stat. § 448.02(3). The Division served Respondent on December 19, 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 telephone prehearing conference held before the Division of Hearings and Appeals on January 20, 2015.

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 appear at the prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default. On January 20, 2015, 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 January 27, 2015.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-9 are taken from the Division's Complaint against Respondent filed in this matter.

Facts Related to the Alleged Violation

1. Respondent Linda R. Rogow, M.D. (D.O.B. November 18, 1949) is licensed in the State of Wisconsin to practice medicine and surgery, having license number 37150-20, first issued on September 29, 1995, with registration current through October 31, 2015.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services is 2455 W. Silver Spring Drive #304, Glendale, Wisconsin 53209.

3. On September 5, 2014, the Division filed a Petition for Mental Examination in DLSC Case No. 14 MED 033.

4. On September 18, 2014, the Wisconsin Medical Examining Board (Board) granted the petition and entered an Order for Mental Examination of Respondent (September Order), attached to the Division's Complaint.

5. The September Order adopted facts and law and required the following:

Within 60 days of the date of the Order, Respondent Linda R. Rogow, M.D., shall provide the Department Monitor with proof that she has scheduled a comprehensive neuropsychological examination and a comprehensive psychiatric examination by a professional preapproved by the Board or its designee, and will undergo the evaluations as soon as possible, but not more than 30 days thereafter. Respondent shall, within 10 days of scheduling the examinations, inform the Department Monitor of the facility, contact information and dates during which the examinations will occur.

6. The September Order mandates other terms of the examinations once they are scheduled with pre-approved examiners, and concludes that a "violation of any of the terms of the Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license to practice medicine and surgery in the state of Wisconsin."

7. All of the deadlines imposed by the September Order have passed.

8. Respondent has not provided the Department Monitor with proof that she has scheduled a comprehensive neuropsychological examination and a comprehensive psychiatric

examination by a professional preapproved by the Board or its designee, and she has not provided the Department Monitor with information regarding the facility, contact information and dates during which the examinations will occur, all as required by the September Order.

9. By her failure to comply with these requirements of the September Order, Respondent cannot comply with its other terms. Consequently, on December 18, 2014, the Board summarily suspended Respondent's license to practice medicine and surgery in the State of Wisconsin.

10. The Board's September Order included the following in the Board's findings of fact:

- DLSC Case No. 14 MED 33 was opened on February 12, 2014, after the Department received information from the United States Drug Enforcement Administration (DEA) regarding its ongoing investigation of Respondent's medical practice, in particular, her prescribing of controlled substances.
- Respondent's medical records reflect an extensive past psychiatric history with multiple diagnoses, some dating back as far as 1982. The records reflect that on various occasions within the last two years, Respondent has presented for medical care for symptoms associated with her various diagnoses.
- The medical records reflect that in October 2013, Respondent terminated an inpatient psychiatric stay against medical advice. The discharge summary indicates that Respondent displayed concerning behaviors and required ongoing care.
- The records reflect that as of January 2014, Respondent discussed one of her mental diagnoses with her family practice physician and the diagnoses was described as being untreated as of that time. As of February 2014, Respondent's records note that her condition may be worsening but nothing indicates she received psychiatric care or medication since her October 2013 discharge.
- Respondent's medical records were provided to the Department's retained medical expert, Dr. Martha Rolli, a Board certified psychiatrist, who indicated that the records presented a number of concerns but that she wished to examine Respondent before reaching any final conclusions regarding Respondent's past and present mental health, her future prognosis and how Respondent's mental health has, and may, affect her ability to safely practice medicine and surgery.

(Div. Exh. A, attached to Complaint)

Facts Related to Default

11. The Complaint and Notice of Hearing in this matter were served on Respondent on December 19, 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 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."

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

13. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for January 20, 2015. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which she could be reached for the conference no later than January 13, 2015. 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."

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

15. At the conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

16. On January 20, 2015, 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 January 27, 2015, a recommended proposed decision and order.

17. The Division filed its recommended proposed decision and order on January 27, 2015.

18. Respondent did not file a response to either the Notice of Default or to the Division's submission.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the January 20, 2015 Notice of Default and Order, Respondent is in default for failure to file an Answer to the Complaint and failing to appear at the prehearing conference held on January 20, 2015. *See* Wis. Admin. Code §§ SPS § 2.09(4) and 2.14; Wis. Admin. Code § HA 1.07(3). Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

Violations of Wisconsin Statute and Administrative Code

The Board has jurisdiction over this matter pursuant to Wis. Stat. § 448.02. Following an investigation and disciplinary hearing, if the Board determines that a licensee has engaged in unprofessional conduct, it may "warn or reprimand that person, or limit, suspend or revoke any license, certificate or limited permit granted by the Board to that person. . . ." Wis. Stat. § 448.02(3)(c).

The phrase "unprofessional conduct" as used in Wis. Stat. § 448.02(3)(c) includes "[t]hose acts or attempted acts of commission or omission defined as unprofessional conduct by the Board under the authority delegated to the Board by s. 15.08(5)(b)." Wis. Stat. § 448.015(4)(am)1. The Board has defined unprofessional conduct in Wis. Admin. Code § Med 10.03.

The definition of unprofessional conduct includes “[v]iolating or attempting to violate ch. 448, Stats., or any provision, condition, or term of a valid rule or order of the board.” Wis. Admin. Code § Med 10.03(1)(a). It is undisputed that Respondent violated a valid order of the Board by failing to obtain comprehensive neuropsychological and psychological examinations as required by the Board’s September Order. As a result of such conduct, Respondent engaged in unprofessional conduct under Wis. Admin. Code § Med 10.03(1)(a) and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

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 license be suspended indefinitely and that she be required to comply with the September Order, complete an assessment establishing her competence to practice medicine and surgery, and follow any education and training recommended by the evaluator. The Division further recommends that Respondent be allowed to petition the Board for a stay of the suspension only upon completion of the ordered terms, and that if the Board grants the stay, the Board be permitted to limit Respondent’s license in any manner it deems appropriate for purposes of discipline.

Under the facts of this case and the criteria set forth in *Aldrich*, the Division’s recommendations are appropriate. With respect to the protection of the public, I note the significant underlying mental health concerns which led the Board to issue the September Order and then summarily suspend Respondent’s license. Those concerns are compounded by Respondent’s failure to comply with the September Order, her failure to provide the Department with current contact information, and her failure to answer the Complaint or appear for the prehearing conference. Taken together, this information establishes that the Board cannot be assured of Respondent’s ability to safely and reliably practice her profession or her willingness to otherwise conform to the Board’s requirements.

Regarding the second factor, rehabilitation, it is important that Respondent understand that she cannot ignore the Board’s orders, especially when the Board has legitimate concerns about Respondent’s ability to safely practice medicine and surgery. Because Respondent has refused to obtain the mental health assessments required or cooperate in any way with these proceedings, it is impossible for the Board to determine the extent of any mental illness Respondent may have and the impact any such illness has on her ability to practice. The only way to move Respondent toward rehabilitation is to suspend her license until such compliance is obtained. Finally, concerning deterrence, other licensees should be on notice that there are significant consequences for failing to comply with a Board order to obtain mental health and competency evaluations when substantial mental health and practice issues are raised.

I therefore adopt the Division’s disciplinary recommendations.

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, D.C.*, 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.

Respondent has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. The factual allegations were deemed admitted and proven. There is no argument to apportion any counts that were unproven, nor is there any argument that the Division investigated and litigated unnecessary facts.

Respondent's conduct is very serious and goes to public safety and protection. The discipline recommended by the Division is severe and is also proportionate to the concerns regarding Respondent's refusal to follow the Board's orders, orders which were intended for the purpose of determining whether Respondent may safely and reliably practice.

Finally, although Respondent does not have any further discipline against her, given the fact that the Department is a "program revenue" agency, whose operating costs are funded by the revenue received for licensees, fairness dictates imposing the costs of disciplining Respondent upon Respondent and not fellow members of the nursing profession who have not engaged in unprofessional conduct.

ORDER

Accordingly, IT IS HEREBY ORDERED:

1. Respondent's license and privilege to practice medicine and surgery in the State of Wisconsin, are SUSPENDED INDEFINITELY under the following terms and conditions.

A. Respondent shall mail or physically deliver all indicia of Wisconsin licensure to practice medicine and surgery to the Department Monitor within 14 days of the effective date of this order.

B. Respondent shall successfully comply with the September Order.

C. Respondent shall undergo and fully cooperate with an assessment establishing her competence to practice medicine and surgery by an assessment program recognized by the Federation of State Medical Boards or one preapproved by the Board's Monitoring Liaison.

1. Respondent shall provide the assessment program with a copy of this Order and the September Order, and shall execute authorizations for

release of information such that the Board's credentialing liaison or other designee may communicate freely with the assessment program staff, may provide documents to the assessment program staff and may use the resulting final assessment report for the Board's purposes.

2. Respondent shall complete, to the satisfaction of the Board's monitoring liaison, all education and training recommended by the competence evaluator. In the alternative, in the discretion of the Board's designee, Respondent shall have a preapproved written plan for remediation that will not create an unacceptable risk of harm to patients.
 3. Respondent is responsible for all costs associated with this requirement.
- D. Upon completing the above requirements and presenting proof thereof acceptable to the Board or its designee, and upon full payment of the Division's recoverable costs as established pursuant to Wis. Admin. Code § SPS 2.18, Respondent may petition the Board for a stay of the suspension. The assessment required under subsection C. above, shall have been completed no more than 90 days before the date of the petition for reinstatement, or as otherwise approved by the Board's designee.
 - E. The determination of whether or not to stay the suspension of Respondent's license to practice medicine and surgery is entirely within the discretion of the Board or its designee. The prerequisites to a petition to stay the suspension should not be interpreted to be an indication that the stay will be granted.
 - F. If the Board agrees to stay the suspension of Respondent's license, the Board or its designee may, in its discretion, limit Respondent's license in any manner the Board or its designee deems appropriate for reasons consistent with the purposes of professional discipline.
 - G. If the Board agrees to stay the suspension of Respondent's license, and Respondent practices under the stay for five years in full compliance with all applicable rules and regulations, and all license limitations imposed under subsection F. above, Respondent may petition the Board to terminate the suspension.
 - H. If the Board agrees to stay or terminate the suspension of Respondent's license, Respondent shall not engage in unprofessional conduct of any kind. The Board or its designee may, in its discretion, remove any stay of the suspension or reinstate the suspension, without further notice or hearing, if the Board determines, to a level of probable cause, that the Respondent has engaged in unprofessional conduct.
 - I. The decision of whether to stay the suspension, impose limitations on Respondent's license to practice medicine and surgery, or terminate the suspension lies solely within the discretion of the Board or its designee and is not reviewable.
2. 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**


3. 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 Linda R. Rogow, M.D.

Dated at Madison, Wisconsin on February 2, 2015.

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 E. Nashold
Administrative Law Judge