

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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**STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING**

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**IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST**

**FINAL DECISION AND ORDER  
WITH VARIANCE**

**AMBER S. LICHTWALT (f/k/a OCHOA), R.N.  
RESPONDENT.**

DHA Case No. SPS-16-0018  
DLSC Case No. 14 NUR 618

**0004766**

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**BACKGROUND**

On May 2, 2016, Administrative Law Judge Jennifer Nashold (ALJ), Division of Hearings and Appeals, issued a Proposed Decision and Order (PDO) in the above referenced matter. The PDO was mailed to all parties. On May 17, 2016, the Division of Legal Services and Compliance (Division) filed an objection, informing the Board of Nursing (Board) that during the pendency of this matter, Respondent renewed her R.N. license, without any restrictions. Therefore, the Division requested the Board order Respondent submit to an Alcohol and Other Drug Abuse (AODA) assessment, drug testing, and other limitations. The Division also requested the Board add citations to specific Wisconsin Statutes and appellate case law regarding the imposition of costs. Respondent did not file a response to the Division's objections. On June 9, 2016, the Board met to consider the merits of the PDO and the stated objections. The Board voted to approve the PDO with variance. The PDO is attached hereto and incorporated in its entirety into this Final Decision and Order with Variance.

**VARIANCE**

Pursuant to Wis. Stat. §§ 440.035(1m) and 441.07(1g), the Board is the regulatory authority and final decision maker governing disciplinary matters of those credentialed by the Board. The matter at hand is characterized as a class 2 proceeding pursuant to Wis. Stat. § 227.01(3)(b). The Board may make modifications to a PDO, in a class 2 proceeding, pursuant to Wis. Stat. § 227.46(2), provided the Board's decision includes an explanation of the basis for each variance.

In the present case, the Board adopts the PDO in its entirety except for the following variances:

1. In the section titled, "FINDINGS OF FACT," under the subsection titled "Facts Related to the Alleged Violations," the first finding (1.), found on page two (2), is varied as follows:
  - a. 1. Respondent Amber S. Lichtwalt R.N., (f/k/a Amber S. Ochoa), (dob July 25, 1984) is licensed in the State of Wisconsin as a professional nurse, having license number 161177-30, first issued on January 2, 2008, and current through February 28, 2018.

On February 29, 2016, Respondent's license expired; therefore the recommended discipline addressed the Respondent's right to renew her license. However, during the time between the dates the Division filed its proposed decision and order (March 31, 2016) and the date the ALJ issued this PDO (May 17, 2016), Respondent retained the right to renew her license upon the satisfaction of the renewal requirements and payment of a late fee. *See* Wis. Stat. §§ 441.01(7), 441.06(3), and 440.08(3). On April 11, 2016, Respondent renewed her license and updated her last name (Lichtwalt) with the Department of Safety and Professional Services. This finding of fact has been varied to reflect these changes.

2. In the subsection titled, DISCUSSION AND CONCLUSIONS OF LAW," the Board adopts the subsections entitled "Default" and "Violations of Wisconsin Statute and Administrative Code." The Board varies the remainder of the Order as follows:

#### 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 requests that Respondent be reprimanded and ordered to submit to an Alcohol and Other Drug Abuse (AODA) assessment within 30 days from the date of the Final Decision and Order (Order). The Division further requests that Respondent be required to submit to drug testing at least 49 times per year; provide a copy of the Order to her nursing employers; refrain from practicing where she has access to controlled substances; and practice only in Wisconsin pursuant to the Nurse Licensure Compact.

In the instant case, Respondent diverted controlled substances for her personal use, which should have been available for patient use at the Clinic. Therefore, the Division's request that Respondent submit to an AODA assessment, within 30 days from the date of the Order, is appropriate. However, the Division's request that Respondent's license be limited, with requirements such as participation in a drug monitoring program and submitting to drug testing, is premature. Since Respondent failed to make herself available for these proceedings, and due to her failure to respond to the Board's requests for information, it is uncertain if she is still using illegally obtained drugs, if she has engaged in treatment, if she is currently working with access to controlled substances, or if she is otherwise being monitored. These are important questions that must be answered in order to determine whether the Respondent is safe to practice as a nurse.

Therefore, Respondent cannot be allowed to practice as a nurse until the Board receives the AODA assessment which addresses these concerns in order to determine whether the Respondent is safe to practice. Consequently, Respondent's license to practice professional nursing is suspended pending receipt of a Board-approved AODA assessment. Upon receipt of the assessment, the Board may determine whether and what action to take on the suspension, and may determine whether and under what terms and conditions Respondent may practice professional nursing.

The AODA assessment will determine if the Respondent is dependent on alcohol, drugs, or other substances. The assessment will also help determine if treatment is necessary and whether further conditions or limitations should be imposed by the Board in order to rehabilitate the Respondent. The suspension will also serve the purpose of conveying the seriousness of the Respondent's responsibility to keep the Board updated regarding her current contact information, and the importance of responding in a timely manner to correspondence sent by the Board.

The suspension pending receipt of the AODA assessment will also serve to protect the public and ensure the Respondent is able to practice nursing in a safe and competent manner. "Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a license is granted to an individual, the State of Wisconsin is assuring the public that the licensed individual is competent in the profession. *Stringez v. Department of Regulation and Licensing Dentistry Examining Board*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). Nurses provide direct patient care, often to vulnerable individuals; therefore, it would be detrimental to public protection to allow Respondent to practice without an assessment confirming she is safe to do so. The discipline imposed, by issuance of this public order, will also deter other nurses from engaging in similar conduct.

### Costs

The Board has authority to assess costs for these disciplinary proceedings pursuant to Wis. Stat. § 440.22(2), which reads, in part:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder.

The Board is not required to go through any particular analysis when determining whether to assess all or part of the costs of this proceeding against the Respondent. Nevertheless, guidance can be found in *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. In *Noesen*, the Court opined:

Under Wis. Stat. § 440.22(2), the Board may, in its discretion, "assess all or part of the costs of the proceeding" against the licensee if the Board takes disciplinary action as a result. We give due weight to the Board's exercise of discretion. Wis. Stat. § 227.57(10). In reviewing the exercise of discretion, we look to determine whether the decision maker examined the relevant facts, applied the proper standard of law, and reached a reasonable conclusion. *Doersching*, 138 Wis. 2d at 328.

*Id.* ¶ 30.

In addition to the above mandatory authority, in previous orders, the Board has considered the following non-mandatory factors to aid in determining if all or part of the costs should be assessed against a Respondent:

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 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; and
7. Any other relevant circumstances.

*In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*  
(LS 0802183 CHI).

In considering these factors, the Board has the discretion to give each factor the weight appropriate given present circumstances. In this case, the Board finds that the imposition of one hundred percent (100%) of the costs is warranted.

The Division has proven all three counts alleged as the factual allegations were deemed admitted and there is no argument to indicate that any factual findings were unwarranted or that litigation was unnecessary. Respondent's actions are extremely serious in nature. As a result, the Division sought significant discipline including a reprimand, an AODA assessment, and limitations on the Respondent's license to practice professional nursing. The discipline imposed in this order is severe. The Respondent's license is suspended pending the result of a Board-approved AODA assessment and further limitations may be imposed as appropriate. Additionally, Respondent has failed to cooperate with the disciplinary process.

Finally, the Department of Safety and Professional Services is a program revenue agency, whose operating costs are funded by the revenue received from credential holders. This is a fact that weighs heavily into the calculation of the appropriate amount of costs to be borne by the Respondent. The Board gives serious consideration as to whether the costs associated with this action should be paid by the Respondent or shared by other non-culpable licensees.

Based on the foregoing, the Board finds the Respondent shall pay one hundred percent (100%) of the costs of this matter.

#### ORDER

For the reasons set forth above it is hereby ORDERED:

1. The Registered Nurse license (# 161177-30) issued to Respondent Amber S. Lichtwalt R.N., (f/k/a Amber S. Ochoa), to practice nursing in the State of Wisconsin, and her privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact is **SUSPENDED** pending receipt of a Board-approved AODA assessment.

2. Respondent Amber S. Lichtwalt R.N., (f/k/a Amber S. Ochoa), shall submit to a Board-approved AODA assessment within 30 days from the date of this Order as follows:
  - a. The provider performing the evaluation must not have treated Respondent and shall have been pre-approved by the Board or its designee, with the opportunity for the Division of Legal Services and Compliance to make its recommendation, prior to the evaluation being performed.
  - b. Respondent shall be responsible for all costs associated with obtaining an AODA assessment.
  - c. Prior to the assessment, Respondent shall provide a copy of this Final Decision and Order to the treater.
  - d. Respondent shall provide and keep on file with the treater current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department to obtain a copy of the assessment. Copies of these releases shall immediately be filed with the Department Monitor.
  - e. Respondent shall comply with the treater's recommendations.
3. Upon receipt of the completed AODA assessment, Respondent shall submit a copy of the AODA assessment for the Board's review.
  - a. The Board, or its designee, may decide whether and what action is appropriate regarding the suspension of Respondent's license.
  - b. The Board, or its designee, may place any conditions or limitations on Respondent's license as it sees fit based on the AODA assessment.
4. Respondent shall pay one hundred percent (100%) of all recoverable costs in this matter in an amount to be established, pursuant to Wis. Stat. § 440.22(2) and 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 & Compliance  
1400 East Washington Ave., P.O. Box 7190  
Madison, WI 53707-7190

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

Dated at Madison, Wisconsin this 22<sup>nd</sup> day of June, 2016.

By: Sheryl Krause,  
A Member of the Board



Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

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In the Matter of Disciplinary Proceedings Against  
Amber S. Ochoa, R.N., Respondent

DHA Case No. SPS-16-0018  
DLSC Case No. 14 NUR 618  
**0004766**

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**PROPOSED DECISION AND ORDER**

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

Amber S. Ochoa, R.N.  
2520 11th Place #205  
Kenosha, WI 53140

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 Amanda L. Florek  
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 (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Amber S. Ochoa, R.N., alleging that Respondent engaged in three counts of unprofessional conduct. The three counts were: (1) Obtaining, possessing or attempting to obtain or possess any drug without lawful authority, in violation of Wis. Admin. Code § N 7.03(8)(e); (2) Failing to cooperate in a timely manner with the Wisconsin Board of Nursing's investigation of a complaint filed against a license holder, in violation of Wis. Admin. Code § N 7.03(1)(c); (3) Failing to notify the Department of her new name or address within 30 days of the change in writing or in accordance with other notification procedures approved by the Department, in violation of Wis. Stat. § 440.11(1).



On February 11, 2016, the Division mailed the Complaint and Notice of Hearing to the address on file with the Department via regular and certified mail. The U.S. Postal Service attempted to forward the regular and certified mailings; however, they were returned to the Department marked “unable to forward – return to sender.” Respondent failed to file an Answer to the Complaint.

On March 2, 2016, the Administrative Law Judge (ALJ) issued a Notice of Telephone Prehearing Conference which set a telephone hearing conference for March 15, 2016. Respondent was required to provide a telephone number to the ALJ no later than March 10, 2016, and failed to provide a telephone number. Respondent failed to appear at the telephone prehearing conference. The Division moved for default judgment based on Respondent’s failure to appear and failure to file an Answer to the Complaint.

On March 15, 2016, the ALJ issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order no later than March 31, 2016. On March 31, 2016, the Division timely filed its submission.

### FINDINGS OF FACT

#### Facts Related to the Alleged Violations

Findings of Fact 1-23 are taken from the Division’s Complaint against Respondent filed in this matter.

1. Respondent Amber S. Ochoa, R.N., (dob July 25, 1984) is licensed in the State of Wisconsin as a professional nurse, having license number 161177-30, first issued on January 2, 2008 and current through February 29, 2016.

2. Respondent’s most recent address on file with the Department is 2520 11<sup>th</sup> Place, #205, Kenosha, Wisconsin 53140.

3. At all times relevant to this proceeding, Respondent was employed as a professional nurse at a clinic (Clinic), located in West Allis, Wisconsin.

4. On October 26, 2014, Nurse A was conducting the Clinic’s daily medication count. The medication log showed that the previous count was 80 hydrocodone/APAP 5/300 mg tablets (Vicodin) and that no tablets had been dispensed in over a month. Therefore, Nurse A should have counted 80 tablets.

5. However, Nurse A discovered there were only 45 tablets present.

6. Nurse A reported the discrepancy to her supervisor.

7. The controlled substances were kept in a locked medication cabinet.

8. The key for the medication cabinet was kept in a lockbox inside a drawer.
9. Nursing staff was required to complete a controlled substance count at the beginning of each shift.
10. Respondent was one of only three non-supervisory staff members that had knowledge of the medication cabinet key and access to the medication.
11. On October 27, 2014, Respondent, during an interview with the Clinic's loss prevention manager, admitted to diverting 35 hydrocodone/APAP 5/300 mg tablets for personal use.
12. The Department's investigation revealed that between May 2013 and June 2015, Respondent received prescriptions for hydrocodone/acetaminophen, tramadol, and oxycodone/acetaminophen from 12 different providers.
13. Respondent has filled several prescriptions early.
14. On November 11, 2014, a Department investigator (S.R.) sent a letter to Respondent at the address on file with the Department requesting a written response to the allegations. The response was due November 24, 2014. Respondent failed to respond to the letter.
15. On November 20, 2014, the letter was returned to the Department marked as "moved, left no address."
16. On November 21, 2014, S.R. sent an email to the email address on file with the Department stating that the letter was returned undeliverable and requesting a written response to the allegations no later than November 28, 2014. Respondent failed to respond to the email.
17. On December 4, 2014, S.R. sent another email to the email address on file with the Department stating that her response had not been received and requesting a written response no later than December 9, 2014.
18. On September 21, 2015, Respondent was subpoenaed to the Department for an investigative interview. The interview was scheduled for October 6, 2015. The subpoena was mailed certified and regular mail to 5005 52<sup>nd</sup> Avenue, Kenosha, Wisconsin 53144. This address was located based on the Wisconsin Prescription Drug Monitoring Program (PDMP) results. Respondent did not appear for the interview or contact the Department in any manner.
19. On September 28, 2015, the certified copy of the subpoena was returned to the Department marked "moved, left no address, unable to forward."
20. Another Department investigator (T.B.) attempted to locate an updated address for Respondent. On September 30, 2015, Respondent was sent a subpoena to a possible new address: 3205 18<sup>th</sup> Avenue, Apartment 11, Kenosha, Wisconsin 53140. This address was located based on public records for a small claims case filed on December 15, 2014 (Kenosha County

case number 2014SC4124). The subpoena was sent certified mail and regular mail and required that Respondent appear on October 9, 2015, for an investigative interview.

21. On October 26, 2015, the certified subpoena sent to 3205 18<sup>th</sup> Avenue, Apartment 11, Kenosha, Wisconsin 53140 was returned marked “unclaimed, return to sender.”

22. As of January 20, 2016, Respondent has not provided a written response to the allegations, updated her address with the Department, or contacted the Department.

23. Vicodin contains hydrocodone. Pursuant to Wis. Stat. § 961.16(2)(a)7., hydrocodone is a Schedule II controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(2).

#### Facts Related to Licensure Status

24. Since the Complaint was filed, Respondent has failed to renew her professional nursing license.

25. Respondent’s license expired on February 29, 2016. (Exhibit A, attached to the Division’s recommended proposed decision and order)

26. Pursuant to Wis. Stat § 440.08(3), Respondent retains the right to renew her license upon payment of a fee until February 28, 2021.

#### Facts Related to Default

27. The Complaint and Notice of Hearing in this matter were served on Respondent on February 11, 2016, by both certified and regular mail at her address on file with the Department, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing instructed Respondent: “If you do not provide a proper Answer within twenty (20) days, you will be found 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.” The U.S. Postal Service attempted to forward the regular and certified mailings; however, they were returned to the Department marked “unable to forward – return to sender.”

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

29. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for March 15, 2016. 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 March 10, 2016. The Notice instructed Respondent: “The Respondent’s failure to appear at the scheduled conference or hearing may result in default judgment being entered against the Respondent.” On March 11, 2015, the Notice of Telephone Prehearing Conference was returned to the Division of Hearings and Appeals by the U.S. Postal Service with no forwarding address.

30. Respondent failed to provide a telephone number, as required by Wis. Admin. Code § HA 1.07(3)(c), and could not be reached for the prehearing conference.

31. On March 15, 2016, the prehearing conference was held. Respondent did not appear. The Division provided a telephone number for Respondent at which the ALJ attempted to contact her but the number was not in service. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). The ALJ granted the motion for default.

32. On March 15, 2016, the ALJ issued a Notice of Default and Order which required the Division to file and serve no later than March 31, 2016, a recommended proposed decision and order. On March 21, 2016, the Notice of Default and Order was returned to the Division of Hearings and Appeals by the U.S. Postal Service with no forwarding address.

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

## DISCUSSION AND CONCLUSIONS OF LAW

### Default

As stated in the March 15, 2016 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the telephone conference held on March 15, 2016. As a result, an order may be entered against her on the basis of the Complaint and other evidence. *See* 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 Wisconsin Board of Nursing (Board) determines that a nurse has committed unprofessional conduct under Wis. Stat. § 441.07(1g)(b) and (d), it may “revoke, limit, suspend or deny a renewal of a license of a practical nurse . . . .” Wis. Stat. § 441.07(1g).

Wisconsin Admin. Code § N 7.03(8)(e) prohibits “obtaining, possessing or attempting to obtain or possess any drug without lawful authority.” Respondent, while working as a nurse at the Clinic, obtained hydrocodone/APAP 5/300 mg tablets without lawful authority. The medication was kept in a locked medication cabinet and was for use at the Clinic. Respondent admitted to the loss prevention manager that she diverted 35 hydrocodone/APAP 5/300 mg tablets for personal use. Respondent used nursing employment to gain access to controlled substances and divert the medication. Therefore, Respondent violated Wis. Admin. Code § N 7.03(8)(e).

Wisconsin Admin. Code § N 7.03(1)(c) prohibits “after a request of the board, failing to cooperate in a timely manner, with the board’s investigation of a complaint filed against a license

holder.”<sup>1</sup> On November 11, 2014, the Department investigator, S.R., sent a request for a written response to the allegations to Respondent’s address on file with the Department. Respondent failed to respond. Investigator S.R. sent two email requests for a written response, one on November 21, 2014 and the other on December 4, 2014. Respondent failed to respond. The Department attempted to obtain more current address information from alternative sources including public records. Respondent failed to respond to any of the attempted communications by the Department. The Department subpoenaed Respondent to the Department for an investigative interview. Respondent failed to appear. Respondent failed to cooperate with the investigation by failing to respond to any of these attempts, in violation of Wis. Admin. Code § N 7.03(1)(c).

Wisconsin Stat. § 440.11(1) requires licensees to update their address within 30 days of a change in address. All written communications from the Department have been returned to the Department by the U.S. Postal Service. The September 28, 2015, certified subpoena was returned marked “moved, left no address, unable to forward.” The Complaint, Notice of Hearing and Notice of Prehearing Conference were all returned to the senders as well. Therefore, Respondent failed to keep her contact information, including address, updated with the Department as required by Wis. Stat. § 440.11(1).

#### 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).

Even though the Respondent’s professional nursing license is currently expired, it is appropriate and necessary to impose discipline. As such, the Division requests that Respondent be reprimanded. The Division further requests that the Respondent’s right to renew her professional nursing license be suspended until Respondent submits payment of costs in this matter and submits to an AODA assessment. The Division recommends that payment of costs and the AODA assessment must be submitted to the Board before renewal may be considered; the Board may then determine whether and under what terms and conditions licensure shall be granted. This recommended discipline is consistent with the purposes articulated in *Aldrich*, for the reasons below.

Respondent diverted controlled substances, which should have been available for patient use at the Clinic, for her personal use. Also, Respondent failed to make herself available for these proceedings or keep the Board updated regarding her current contact information. Due to her lack of communication, it is uncertain if she is still using illegally obtained drugs, if she has engaged in treatment, if she is currently working with access to controlled substances or if she is otherwise being monitored. Rehabilitation requires limitations to address these concerns. The AODA assessment will determine if Respondent is dependent on drugs or other substances. The assessment will also help determine if treatment is necessary and whether further conditions or limitations should be imposed by the Board if renewal is granted. Receiving a reprimand will

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<sup>1</sup> There is a rebuttable presumption that a credential holder who takes longer than 30 days to respond to a request of the Board has failed to cooperate in a timely manner. *Id.*

also ensure Respondent understands the seriousness of her conduct as well as the need to respond to the Board and keep the Board informed.

“Protection of the public is the purpose of requiring a license.” *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a license is granted to an individual, the State of Wisconsin is assuring the public that the licensed individual is competent in the profession. *Stringez v. Department of Regulation and Licensing Dentistry Examining Board*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). Even though Respondent’s nursing license is currently expired, she retains the right to renew her license by simply paying the renewal fee and a late fee. Wis. Stat. § 440.08(3)(a). Without suspending Respondent’s right to renew, Respondent could simply pay the renewal and late fee and begin practicing nursing. The suspension until she has obtained an AODA assessment will give the Board the necessary information to determine if limitations and conditions are required to ensure Respondent is able to practice nursing in a safe and competent manner. Nurses provide direct patient care, often to vulnerable individuals; therefore, it would be detrimental to public protection to allow Respondent to practice without an assessment confirming she is safe to do so. The discipline imposed, by issuance of this public order, will also deter other nurses from engaging in similar conduct.

The Board has issued reprimands with limitations in several cases with similar facts. Therefore, a reprimand and AODA assessment is appropriate in this case. For example, in *In the Matter of the Disciplinary Proceedings Against Karyn Kaiser, L.P.N.*, Order No. 0003782 (Feb. 10, 2015), the ALJ recommended and the Board reprimanded Ms. Kaiser and limited her license. In that case, Ms. Kaiser diverted oxycodone and hydrocodone that should have been wasted. Ms. Kaiser admitted her conduct to a police officer. This is similar to the instant case because Respondent diverted medication from her employer for personal use and subsequently admitted her conduct to the Clinic’s loss prevention manager. In the *Kaiser* matter, the Board determined that reprimand was necessary to rehabilitate Ms. Kaiser, protect the public and deter other licensees. The Board also required Ms. Kaiser complete an AODA assessment and her license was limited for two years. Ms. Kaiser’s two-year license limitations included: (1) drug testing at least 49 times per year; (2) showing a copy of the final decision and order in the matter to all employers before engaging in employment; (3) preventing Ms. Kaiser from working anywhere where she had access to controlled substances; (4) requiring Ms. Kaiser to practice only in Wisconsin pursuant to the Nurse Licensure Compact; and (5) education on the topic of ethics.

In the case, *In the Matter of Disciplinary Proceedings Against Ericka L. Danforth, R.N.*, Order No. 0003299 (July 10, 2014), the Board reprimanded Ms. Danforth and limited her license. In that case, Ms. Danforth had several medication discrepancies that she was not able explain at a health facility. After leaving the facility, Ms. Danforth was employed at a nursing home. At the nursing home, Vicodin was missing and all staff with access were drug tested. All other staff tested negative, but Respondent’s urine sample was not the proper temperature. Respondent refused to comply with a witnessed drug screen and resigned from employment. The Board determined a reprimand was necessary to rehabilitate Ms. Danforth, protect the public and deter other licensees. The Board also required Ms. Danforth complete an AODA assessment and limited her license for two years. Ms. Danforth’s two-year license limitations included:

(1) drug testing at least 49 times per year; and (2) practicing only in Wisconsin pursuant to the Nurse Licensure Compact.

*In the Matter of Disciplinary Proceedings Against Catherine M. Cowart, R.N.*, Order No. 0003626 (Jan. 8, 2015), the Board reprimanded Ms. Cowart and limited her license for two years. In that case, Ms. Cowart stole controlled substances from a prior patient for personal use. Ms. Cowart had already undergone an AODA assessment. The Board determined a reprimand was necessary to rehabilitate Ms. Cowart, protect the public and deter other licensees. The Board included the following limitations of Ms. Cowart's license: (1) drug testing at least 49 times per year; (2) showing a copy of the order to all employers before engaging in nursing employment; (3) preventing Ms. Cowart from working anywhere where she had access to controlled substances; (4) requiring Ms. Cowart complete four hours of education on ethics and three hours of education on boundaries; and (5) requiring Ms. Cowart to practice only in Wisconsin pursuant to the Nurse Licensure Compact.

Further, suspending the right to renew a credential is consistent with prior decisions. *See e.g., In the Matter of Disciplinary Proceedings Against Kody F. Jack and Delta Ops Private Police Agent LLC*, Order No. 0004565 (Feb. 23, 2016) (Department revoked the right to renew credential holder's expired license). Even though Respondent's license is expired, she retains the right to renew upon simply a payment of a fee for five years. Therefore it is necessary to suspend her right to renew and place conditions on renewal until the Board is confident she has been rehabilitated and the public will be protected.

### 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. Factors which may be considered in assessing costs include: (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). It is not mandatory that any or all of these factors be considered and it is within the Board's discretion to determine what weight, if any, to give any factors considered.

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

Particularly relevant are the following facts. The Division has proven all counts alleged. The factual allegations were deemed admitted and there is no argument to indicate that any factual findings were unwarranted or that litigation was unnecessary. Respondent's actions are extremely serious in nature. As a result, the Division is seeking a reprimand of Respondent,

suspension of her right to renew her license, and conditions on any future renewal. Moreover, Respondent has failed to cooperate with the disciplinary process. Finally, it would be unfair to impose the costs of pursuing discipline in this matter on those licensees who, unlike Respondent, have not engaged in misconduct.

In view of the foregoing, and with no argument from Respondent to the contrary, Respondent shall pay the full amount of recoverable costs of this proceeding, in an amount to be determined under Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS HEREBY ORDERED that Respondent Amber S. Ochoa, R.N., is REPRIMANDED and that her right to renew her professional nursing license (license number 161177-30) and her privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact is SUSPENDED.

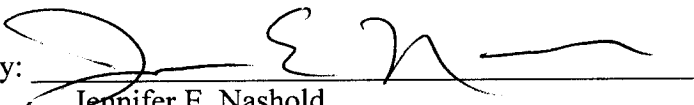
IT IS FURTHER ORDERED that should Respondent attempt to renew her license within the applicable five-year right to renew period, Respondent shall first pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18, and shall submit to an AODA assessment and provide such results to the Department, prior to the Board of Nursing's consideration of any such renewal application.

IT IS FURTHER ORDERED that should Respondent attempt to renew her license within the applicable five-year right to renew period, the Board may determine whether and under what terms and conditions such renewal may be granted.

IT IS FURTHER ORDERED that the terms of this Order are effective the date of the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin on May 2, 2016.

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