

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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**Before the  
State Of Wisconsin  
Board of Nursing**

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In the Matter of Disciplinary Proceedings Against  
Nickea C. Connolly, R.N., Respondent

FINAL DECISION AND ORDER

Order No. 0004805

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**Division of Legal Services and Compliance Case No. 15 NUR 562**

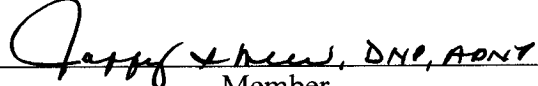
The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 14<sup>th</sup> day of July, 2016.

  
Member  
Board of Nursing



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

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In the Matter of Disciplinary Proceedings Against  
Nickea C. Connolly, R.N., Respondent

DHA Case No. SPS-16-0015  
DLSC Case No. 15 NUR 562

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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:

Nickea C. Connolly, R.N.  
990 101<sup>st</sup> Street  
Roberts, WI 54023

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 (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Nickea C. Connolly, R.N., (Respondent) on February 3, 2016, alleging that Respondent violated a term, provision, or condition of an order of the Board, in violation of Wis. Admin. Code § N 7.03(1)(g).

The Division mailed the Complaint and Notice of Hearing to Respondent's address on file with the Department via first class (return service requested) and certified mail on February 3, 2016. On March 16, 2016, the certified mail was returned to the Department marked by the U.S. Postal Service as "unable to forward" after two notices had been left for Respondent. The envelope mailed via first class was not returned.

On February 23, 2016, the Administrative Law Judge (ALJ) issued a Notice of Telephone Prehearing Conference which set a telephone hearing conference for March 7, 2016. Both parties appeared for the March 7, 2016 conference, at which time Respondent admitted the allegations in the Complaint filed by the Division and represented that she would sign an agreement surrendering her license. The ALJ rescheduled the telephone conference for April 11, 2016 to give the parties time to sign an agreement.

Respondent failed to appear for the April 11, 2016 telephone conference and failed to sign an agreement. The Division requested, and the ALJ ordered, that the telephone conference be rescheduled so the parties could make a final attempt to reach an agreement. The ALJ scheduled the telephone conference for April 28, 2016.

Respondent failed to appear for the April 28, 2016 telephone conference, could not be reached at the number previously provided, and failed to sign an agreement. The Division moved for default judgment based on Respondent's failure to appear and failure to file an Answer to the Complaint. On April 28, 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 May 12, 2016. The Division timely filed its submission.

## FINDINGS OF FACT

### Facts Related to the Alleged Violations

Findings of Fact 1-11 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Nickea C. Connolly, R.N., (D.O.B. December 9, 1976) is licensed in the State of Wisconsin as a professional nurse, having license number 198002-30, first issued on October 8, 2013 and current through February 29, 2016.

2. Respondent's most recent address on file with the Department is 990 101<sup>st</sup> Street, Roberts, Wisconsin 54023.

3. On August 27, 2015, the Board of Nursing (Board) issued a Final Decision and Order (Order #4219) which limited Respondent's license as follows:

- a. Enroll and participate in an approved drug monitoring program for a period of at least two years from the date of the Order;
- b. Within 60 days (by October 27, 2015), undergo an assessment by an approved mental health care provider experienced in evaluating health care practitioners' fitness for duty; and
- c. Within 60 days (by October 27, 2015), undergo an AODA assessment with an approved evaluator.

4. On August 31, 2015, the Department Monitor mailed a letter to Respondent at her address of record that explained the deadlines and enrollment instructions for approved drug monitoring programs.

5. Respondent was instructed to enroll in an approved drug monitoring program by September 11, 2015.

6. As of September 14, 2015, Respondent had not yet contacted the Department Monitor and had not enrolled in an approved drug monitoring program.

7. On September 14, 2015, the Department Monitor emailed the same information from the August 31, 2015 letter to Respondent at her email address of record.

8. On September 22, 2015, the Department Monitor called Respondent at her phone number of record and left a message.

9. On September 23, 2015, the Department Monitor also checked with both approved programs and neither had received a request for enrollment from Respondent.

10. As of January 31, 2016, Respondent has not contacted the Department Monitor or enrolled in an approved drug monitoring program.

11. Respondent is in violation of the August 27, 2015 Board Order.

#### Facts Related to Board's August 27, 2015 Order

12. The circumstances which gave rise to the Board's August 27, 2015 Order related to Respondent's conduct in Minnesota involving her use of marijuana, being untruthful on her Minnesota nursing application, and a subsequent failure to comply with the Minnesota Board of Nursing's drug monitoring conditions and chemical dependency and mental health evaluations. (Div. Ex. A, attached to its recommended proposed decision and order)

#### Facts Related to License Status

13. As of the date of filing of this decision and order, Respondent's license has expired and has not been renewed. Respondent retains the right to renew her license upon payment of a fee according to Wis. Stat. § 440.08(3).

#### Facts Related to Default

14. The Complaint and Notice in this matter were served on Respondent on February 3, 2016, by both certified and first class mail, 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."

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

16. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for March 7, 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 2, 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.”

17. On March 7, 2016, the telephone prehearing conference was held at which time Respondent admitted the allegations in the Complaint filed by the Division and represented that she would sign an agreement surrendering her license. The ALJ scheduled a telephone status conference for April 11, 2016 to give the parties time to sign an agreement.

18. On April 11, 2016, the telephone status conference was held at which Respondent failed to appear. She had also failed to sign an agreement. The Division requested, and the ALJ ordered, that the telephone conference be rescheduled so the parties could make a final attempt to reach an agreement. The ALJ scheduled the telephone conference for April 28, 2016.

19. On April 28, 2016, the telephone status conference was held at which Respondent failed to appear and could not be reached at the telephone number previously provided. She had again failed to sign an agreement. 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.

20. On April 28, 2016, the ALJ issued a Notice of Default and Order which required the Division to file and serve no later than May 12, 2016, a recommended proposed decision and order.

21. The Division timely filed its recommended proposed decision and order. Respondent did not provide a response to either the Notice of Default and Order or to the Division’s submission.

## DISCUSSION AND CONCLUSIONS OF LAW

### Default

As stated in the April 28, 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 April 28, 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 Board determines that a nurse has violated subchapter I of Chapter 441 of the Wisconsin Statutes or any rule adopted by the Board under the authority of that subchapter, or that the nurse has engaged in unprofessional

conduct, it may reprimand the nurse or may revoke, limit, suspend or deny a renewal of the nurse's license. Wis. Stat. § 441.07(1g)(b) and (d).

The phrase, "unprofessional conduct," includes "[v]iolating any term, provision, or condition of any order of the board." Wis. Admin. Code § N 7.03(1)(g). As shown by the facts set forth above, Respondent engaged in unprofessional conduct under this provision and is therefore subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (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 Board's August 27, 2015 Order was predicated on conduct occurring in Minnesota which involved Respondent's use of marijuana, her untruthful statements on her Minnesota nursing application, and a subsequent failure to comply with the Minnesota Board of Nursing's drug monitoring conditions and chemical dependency and mental health evaluations. Respondent has similarly failed to comply with the drug monitoring and mental health and AODA assessments ordered by the Wisconsin Board of Nursing. At this juncture, it is not known what, if any, drug treatment Respondent has undergone nor is it known whether she is participating in any monitoring program.

Even though Respondent's professional nursing license is currently expired, it is appropriate and necessary to impose discipline. Under the circumstances of this case, the only way to adequately promote the rehabilitation of Respondent and protect the public is to indefinitely suspend Respondent's right to renew her license until she complies with the mental health and AODA requirements imposed by the Board in its August 27, 2015 Order. This level of discipline will also deter other licensees from engaging in similar conduct which substantially relates to the practice of nursing and patient care.

### 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 all or any of these factors be considered and it is within the Board's discretion to determine what weight, if any, to give any factors considered.

Particularly relevant are the following considerations. The factual allegations were deemed admitted, the Division has proven the counts alleged and there is no argument that any factual findings or litigation were unnecessary. Respondent's conduct is serious in nature and her failure to participate in these proceedings negates any mitigation of imposing the full costs of this matter. As stated, Respondent has been disciplined by both the Minnesota and Wisconsin boards on prior occasions and has been noncompliant with the boards' orders in those cases. Finally, it would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Therefore, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings.

ORDER

Accordingly, IT IS ORDERED that Respondent Nickea C. Connolly's professional nursing license (license number 198002-30), her right to renew her license, and her privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, be suspended indefinitely until she complies with the Board's August 27, 2015 order.

IT IS FURTHER ORDERED that should Respondent attempt to renew her license within five years of the expiration, she must first pay the full costs of this proceeding in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18, shall submit to an AODA assessment and mental health assessment as set forth in the Board's August 27, 2015 Order, and shall provide such results to the Department prior to the Board of Nursing's consideration of any such renewal application.

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 18, 2016.

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By: \_\_\_\_\_



Jennifer E. Nashold  
Administrative Law Judge