

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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

In the Matter of Disciplinary Proceedings Against
Connie J. Zimmerman, L.P.N., Respondent

FINAL DECISION AND ORDER

Order No. 0005162

Division of Legal Services and Compliance Case No. 15 NUR 554

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 9th day of February, 2017.

A handwritten signature in cursive script that reads "Doug Krause".

Member
Wisconsin Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Connie J. Zimmerman, L.P.N., Respondent

DHA Case No. SPS-16-0063
DLSC Case No. 15 NUR 554

PROPOSED DECISION AND ORDER

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

Connie Zimmerman, L.P.N.
W1373 County road HH, Lot #14
New Holstein, WI 53061

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

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

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

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Connie J. Zimmerman, L.P.N., alleging that Respondent engaged in three counts of unprofessional conduct.¹

¹ The three counts are as follows: (1) "Violating . . . any law substantially related to the practice of nursing or being convicted of any crime substantially related to the practice of nursing," Wis. Admin. Code § N 7.03(2); (2) "Failing to notify the board of a felony or misdemeanor conviction within 48 hours after the entry of the judgment of conviction," Wis. Admin. Code § N 7.03(1)(h); and (3) "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." Wis. Admin. Code § N 7.03(1)(c).

Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09, and failed to appear at a status conference held on December 21, 2016. On December 22, 2016, the undersigned Administrative Law Judge (ALJ) issued a Notice of Default and Order against Respondent based on Respondent's failure to file an Answer to the Complaint and failure to appear at the status conference. On January 6, 2017, the Division filed a recommended proposed decision and order.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-13 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Connie J. Zimmerman, L.P.N. (DOB December 6, 1962), is licensed in the State of Wisconsin as a practical nurse, having license number 32568-31, first issued on August 5, 1994 and current through April 30, 2017.

2. Respondent's most recent address on file with the Department is 207 West Cook Street, Apartment 503, Portage, Wisconsin 53901-2195.

3. Upon information and belief, Respondent's current address is W1373 County Road HH, Lot #14, New Holstein, Wisconsin 53061.

4. On September 1, 2015, Respondent, in Columbia County Circuit Court case number 2014CF448, pled no contest and was convicted of one count of possession of narcotic drugs, in violation of Wis. Stat. § 961.41(3g)(am), a felony. As part of her sentence, Respondent was required to complete an AODA (alcohol and other drug abuse) assessment.

5. Respondent did not notify the Department of the conviction within 48 hours of the entry of the judgment of conviction.

6. On October 7, 2015, the Department sent a letter to Respondent's address on file requesting she provide a statement regarding the circumstances of her conviction, certified copies of the criminal complaint and/or police report and the judgment of conviction.

7. On October 15, 2015, the letter was returned to the Department with a forwarding address of W1373 County Road HH, Lot #14, New Holstein, Wisconsin 53061-9779.

8. On the same day, a letter requesting the same information was sent to Respondent's forwarding address in New Holstein. Respondent was asked to provide the information to the Department no later than October 30, 2015.

9. Respondent failed to respond to the letter or send the requested information to the Department.

10. On March 11, 2016, a Department investigator sent an email to Respondent requesting information. Respondent was asked to respond no later than March 25, 2016.

11. Respondent failed to respond to the March 11, 2016 email.

12. On March 22, 2016, a Department investigator attempted to contact Respondent via the telephone number on file with the Department. Respondent did not answer and her voicemail box was full and could not accept new messages.

13. As of June 7, 2016, Respondent had failed to respond to any of the Department's requests for information.

Facts Related to Default

14. The Complaint and Notice of Hearing in this matter were served on Respondent on October 17, 2016, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing informed Respondent: "If you do not provide a proper Answer within twenty (20) days, you will be found to be in default, and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

15. The Division mailed the Complaint and Notice of Hearing to the address on file with the Department in Portage, Wisconsin, and to Respondent's known address in New Holstein, Wisconsin, via regular and certified mail. On October 24, 2016, the certified and regular mail sent to Respondent's Portage address was returned to the Department. The U.S. Post Office made three attempts to deliver the certified mail to Respondent's Portage address. On November 28, 2016, the certified mail was returned to the Department. The Complaint and Notice of Hearing sent to Respondent via regular mail to her Portage address was returned to the Department and marked as undeliverable as addressed with no forwarding address. The Complaint and Notice of Hearing sent to Respondent at the New Holstein address was not returned to the Department by the U.S. Postal Service.

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

17. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for November 22, 2016. Notice of this prehearing conference was sent to both parties, using both Respondent's Portage and New Holstein addresses, with instructions that Respondent provide the ALJ with a telephone number at which she could be reached for the conference no later than November 18, 2016. Respondent failed to provide a telephone number.

18. At the prehearing conference held on November 22, 2016, the Division provided the ALJ with a telephone number for Respondent and a conference was held. Respondent indicated that she had not reviewed the settlement offer sent by Attorney Kluck in June of 2016 due to a move and that it was probably placed into a box. Attorney Kluck indicated that she would re-

send the settlement offer, along with an additional copy of the Complaint, to Respondent's New Holstein address. The parties agreed to schedule a telephone conference for December 21, 2016.

19. On November 22, 2016, the ALJ issued a Notice of Telephone Status Conference to be held on December 21, 2016, which was sent to the New Holstein address confirmed by Respondent.

20. On December 21, 2016, the status conference was held. Respondent did not appear. 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.

21. On December 21, 2016, the ALJ issued a Notice of Default and Order which notified Respondent that she was in default and required the Division to file and serve no later than January 10, 2017, a recommended proposed decision and order.

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

23. Respondent did not file a response to either the Division's submission or to the ALJ's Notice of Default and Order.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the December 21, 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 status conference held on December 21, 2016. *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

Pursuant to Wis. Stat. § 441.07(1g)(b), the Wisconsin Board of Nursing (Board) may revoke, limit, suspend, the license of a licensed practical nurse or may reprimand the nurse if the Board finds that the nurse engaged in “[o]ne or more violations of this subchapter or any rule adopted by the board under the authority of this subchapter.”

Wisconsin Admin. Code § N 7.03(2), prohibits “violating . . . any law substantially related to the practice of nursing or being convicted of any crime substantially related to the practice of nursing.” Respondent was convicted on September 1, 2015 of felony possession of narcotic drugs. With no argument by Respondent to the contrary, I conclude that this conviction is substantially related to the practice of nursing.

By failing to notify the Department of this conviction, Respondent also violated Wis. Admin. Code § N 7.03(1)(h), which prohibits “the failure to notify the board of a felony or misdemeanor conviction within 48 hours after the entry of the judgment of conviction.”

Finally, by repeatedly failing to respond to the Department’s requests for information during the course of its investigation, Respondent violated Wis. Admin. Code § N 7.03(1)(c), which prohibits “after a request by the board, failing to cooperate in a timely manner[] with the board’s investigation of a complaint filed against a license holder.”²

As a result of Respondent’s conduct, she is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b).

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 nursing license be suspended indefinitely until she completes and AODA assessment and complies with any recommendations for treatment resulting from the assessment. The Division also requests that Respondent’s license be limited to require her to complete continuing education on the topics of risks of illicit drug use, nurse practice acts and strategies to aid substance abusers. Based on this record and with no argument to the contrary offered by Respondent, I adopt the Division’s disciplinary recommendations, as set forth in more detail in the Order section below.

Respondent’s conduct in engaging in criminal possession of narcotic drugs is serious. Nurses have access to controlled substances and narcotics as a part of their nursing practice and have to be trusted to handle those medications in a responsible and lawful manner. Respondent’s disregard for the law and involvement in criminal drug possession is extremely concerning because it is not known whether she had the drugs for her personal use or for illicit use by others. Either way, possession of the narcotics posed a serious risk of harm to whomever the end user would be.

Furthermore, Respondent failed to respond to the Department’s repeated requests for information related to the conviction and has failed to make herself available for these proceedings. Due to her lack of communication, it is uncertain if she is using illegally obtained drugs, if she has engaged in treatment, if she is currently practicing nursing with access to controlled substances or if she is otherwise being monitored.

Respondent will need an AODA assessment to determine if she is abusing or dependent on drugs or alcohol, if she is abusing her prescription medications and if treatment is needed. If a treater determines drug treatment is needed, Respondent should comply with the treater’s

² It may be reasonably inferred from the record, and Respondent does not dispute, that the Department’s requests for information were made on behalf of the Board in the course of the Board’s investigation.

recommendations. If the treater determines that drug monitoring is needed, drug testing should be ordered to ensure Respondent is not taking non-prescribed medications or other illegal drugs.

In order to protect the public, Respondent's practical nursing license should be suspended until she has undergone the AODA assessment to determine if she has any drug addiction or dependence issues. Depending on the results and recommendations from the AODA, the Board may impose additional limitations on Respondent's license to make sure that she is able to safely practice nursing. The suspension will serve to deter others in the nursing profession from illegally possessing narcotics and failing to cooperate with the Board's investigation. During the pendency of Respondent's treatment and license limitations, Respondent should be restricted to work in Wisconsin pursuant to the Nurse Licensure Compact because otherwise monitoring becomes too difficult.

In order to promote rehabilitation, the discipline imposed against Respondent shall also include a limitation on her license requiring her to complete continuing education on the topics of risks of illicit drug use, nurse practice acts and strategies to aid substance abusers.

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 Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. *See* Wis. Stat. § 440.22(2). In exercising such discretion, the Board must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *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 previous orders, many factors have been considered when determining if all or part of the costs should be assessed against a Respondent. These factors have included: (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 within the Board's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

In this case, the Division has proven all counts alleged. Respondent's actions are serious in nature -- possession of illegal narcotics, failure to report a felony conviction to the Department

and failure to comply with requests for information by the Board regarding her conviction. The discipline sought by the Division and granted in this case is also serious, indefinite suspension of Respondent's nursing license until the Board receives sufficient assurances that Respondent may safely and competently practice. Furthermore, it would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Accordingly, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings.

ORDER

Accordingly, IT IS HEREBY ORDERED that Respondent's practical nursing license (license number 32568-31) and her privilege to practice nursing in Wisconsin pursuant to the Nurse Licensure Compact is SUSPENDED INDEFINITELY as follows:

- a. Respondent may petition the Board to terminate the suspension upon providing proof to the Board or its designee that Respondent has, at her own expense, undergone an AODA assessment.
- b. In obtaining an AODA assessment, Respondent shall comply with the following terms and conditions:
 - i. Respondent shall be responsible for all costs associated with obtaining an AODA assessment.
 - ii. Prior to the assessment, Respondent shall provide a copy of the Board's Final Decision and Order to the evaluator.
 - iii. Respondent shall provide and keep on file with the evaluator 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 assessments shall immediately be filed with the Department Monitor.
 - iv. Respondent shall comply with the evaluator's recommendations.
 - v. The Board may limit Respondent's license in a manner to address any concerns the Board has as a result of the AODA assessment and to address any recommendations resulting from the assessment, including, but not limited to, restrictions on the nature of practice or practice setting or requirements for supervision of practice; drug and alcohol treatment and counseling; and drug monitoring.
- c. Respondent shall execute necessary documents authorizing the Division to obtain records of evaluation, and to discuss Respondent and her case with the evaluator. Respondent shall execute all releases necessary to permit

disclosure of the AODA assessment to the Board or its designee. Certified copies of the AODA assessment shall be admissible in any future proceeding before the Board.

- d. If Respondent requests a hearing on the termination of the suspension, 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.

IT IS FURTHER ORDERED that Respondent's practical nursing license (license number 32568-31) and her privilege to practice nursing in Wisconsin pursuant to the Nurse Licensure Compact is LIMITED as follows:

- a. Within 90 days from the date of this Order, Respondent shall at her own expense, successfully complete three hours of education on the topic of nurse practice acts, three hours of education on the risks of illicit drug use, and three hours of education on the topic of strategies to aid substance abusers offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the courses.
- b. Respondent shall submit proof of successful completion of the education in the form of verification from the institution providing the education to the Department Monitor at the address below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department, and also may not be used in future attempts to upgrade a credential in Wisconsin.
- c. This limitation shall be removed from Respondent's license after satisfying the Board or its designee that Respondent has successfully completed all of the ordered education.
- d. Pursuant to Nurse Licensure Compact regulations, Respondent's nursing practice is limited to Wisconsin during the pendency of this limitation. This requirement may be waived only upon the prior written authorization of both the Wisconsin Board and the regulatory authority in the state in which Respondent proposes to practice.

IT IS FURTHER ORDERED that requests for approval of courses, results of the AODA assessment, and proof of successful course completion shall be sent by Respondent to the Department Monitor at the address below.

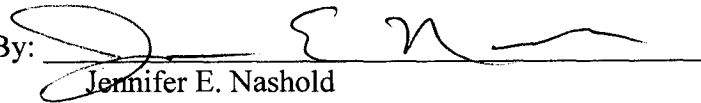
IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

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

Dated at Madison, Wisconsin on January 12, 2017.

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