

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

LEIA M. CRUZ-PEREZ, R.N.,
RESPONDENT.

FINAL DECISION AND ORDER
WITH VARIANCE

DHA Case No. SPS-16-0062
DLSC Case No. 15 NUR 443

0005326

BACKGROUND

On March 10, 2017, Administrative Law Judge Jennifer E. Nashold (ALJ) issued a Proposed Decision and Order (PDO) in the above-captioned case. The PDO was mailed to all parties. On March 27, 2017, the Department of Safety and Professional Services (Department) timely filed objections. Respondent did not file objections or respond to the Department's objections. On May 11, 2017, the Board of Nursing (Board) met to consider the merits of the PDO and objections. The Board voted to approve the PDO with a variance. The PDO is attached hereto and incorporated in its entirety into this Final Decision and Order with Variance (Order).

VARIANCE

Pursuant to Wis. Stat. §§ 440.035(1m) and 441.07, 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). The Board may vary a PDO in a class 2 proceeding pursuant to Wis. Stat. § 227.46(2).

In the present case, the Board adopts the PDO in its entirety with the exception of a variance to the section titled, "**ORDER**" found on pages seven (7) through nine (9) of the PDO. The Board issues the following variance because it is consistent with recent Board actions, it is the best means to ensure compliance with the limitation of Respondent showing the Order to her employer(s), it is necessary to put Respondent on notice of what will happen if she violates the Order, it provides the Department Monitor the authority to suspend Respondent for violation of the Order, it provides necessary details for how to remove a suspension if it is put in place and it provides necessary information to Respondent on how to

petition for modification of the Order after showing a period of compliance. Furthermore, based on Respondent's history of failing to cooperate in this matter and failing to comply with terms of her probation, it is necessary to put her on notice of the ramifications of violating this Order. Therefore, the following variance to the PDO is necessary.

The section titled "ORDER" is varied as follows:

On page nine (9), at the end of paragraph 2.a.ix., the following language shall be added:

Respondent shall provide the Department Monitor with written acknowledgment from each nursing employer that a copy of this Order has been received. Such acknowledgment shall be provided to the Department Monitor within fourteen (14) days of beginning new employment and/or within fourteen (14) days of the date of this Order for employment current as of the date of this Order.

On page nine (9), the following paragraphs shall also be added:

4. The Board or its designee may, without hearing, suspend Respondent's nursing license upon receipt of information that Respondent is in substantial or repeated violation of any provision of this Order. A substantial violation includes, but is not limited to, a positive drug screen. A repeated violation is defined as multiple violations of the same provision or violation of more than one provision. The Board or its designee may, in conjunction with the suspension, prohibit Respondent from seeking termination of the suspension for a specified period of time.
5. The Board or its designee may, in its discretion, terminate any suspension if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the suspension to be terminated. Whether to terminate the suspension shall be wholly in the discretion of the Board or its designee.
6. Following one year from the date of this Order, Respondent may petition the Board on an annual basis for a modification of the terms of this Order. After two (2) consecutive years of successful compliance, the Respondent may petition the Board for return of full licensure. Any petition shall be sent to the Department Monitor. The Board may grant or deny any petition, in its discretion, or may modify this Order as it sees fit.

Dated at Madison, Wisconsin this 30 day of May, 2017.

By: Shay Krause 
A Member of the Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Leia Cruz-Perez, R.N., Respondent

DHA Case No. SPS-16-0062
DLSC Case No. 15 NUR 443

0005326

PROPOSED DECISION AND ORDER

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

Leia Cruz-Perez, R.N.
1725 Fremont Street
Stevens Point, WI 54481

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 SUMMARY

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 Leia M. Cruz-Perez, R.N. (Respondent), alleging that Respondent: (1) engaged in unprofessional conduct as defined by Wis. Admin. Code § N 7.03(1)(h) by failing to notify the Wisconsin Board of Nursing (Board) of a felony or misdemeanor conviction in writing within 48 hours after entry of the judgement of conviction or finding; and (2) engaged in unprofessional conduct as defined by Wis. Admin. Code § N 7.03(8)(e) by obtaining or possessing a drug without lawful authority.

The Division served Respondent on October 7, 2016, by sending a copy of the Notice of Hearing and Complaint to her last known address on file with the Department via certified and regular mail. Respondent failed to file an Answer to the Division's Complaint.

Following due notice, Respondent failed to appear for a telephone conference held on February 14, 2017, notice of which was provided by the undersigned administrative law judge

(ALJ). The ALJ issued a Notice of Default on February 14, 2017, to which Respondent did not respond.

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 Leia M. Cruz-Perez, R.N. (DOB June 23, 1982), is licensed in the State of Wisconsin as a professional nurse, having license number 173988-30, first issued on July 14, 2010, and current through February 28, 2018.

2. Respondent's most recent address on file with the Department is 1725 Fremont Street, Stevens Point, Wisconsin 54481.

3. On December 29, 2014, Respondent was charged with possession of tetrahydrocannabinols (THC), in violation of Wis. Stat. § 961.41(3g)(e), and possession of drug paraphernalia, in violation of Wis. Stat. § 961.573(1), in Portage County circuit court case number 2014CM502.

4. The charges in Portage County circuit court case number 2014CM502 were based on the following facts, as outlined in the criminal complaint:

- a. On August 5, 2014, Respondent was the passenger of a vehicle that was observed traveling with its lights flashing.
- b. A Stevens Point police officer pulled over the vehicle.
- c. Another passenger had a felony probation warrant and the officers requested K-9 unit assistance.
- d. The K-9 unit showed indication of drugs and a plastic bag of green leafy substance was located with a metal pipe containing black residue in the passenger door, where the Respondent had been sitting.
- e. The green leafy substance tested positive for THC.

5. On November 10, 2014, during her initial appearance, Respondent was released on signature bond with the following conditions:

- f. Do not possess or consume controlled substances without a valid prescription;
- g. Do not possess any drug paraphernalia;
- h. Do not associate with any person using illegal controlled substances; and

- i. Report alcohol and drug free to the day report center on the days she has court.

6. On February 11, 2015, Respondent was charged with bail jumping, in violation of Wis. Stat. § 946.49(1)(a), a misdemeanor, in Portage County circuit court case number 2015CM063.

7. The charges in Portage County circuit court case number 2015CM63 were based on the following facts, as outlined in the criminal complaint:

- j. On November 24, 2014, Respondent was on bond due to charges in case number 2014CM502.
- k. Respondent's bond conditions required reporting alcohol and drug free with the day report center.
- l. On November 24, 2014, Respondent provided a urine sample that was positive for THC and amphetamines.

8. On February 19, 2015, Respondent was charged with bail jumping, in violation of Wis. Stat. § 946.49(1)(a), a misdemeanor, in Portage County circuit court case number 2015CM062.

9. The charges in Portage County circuit court case number 2015CM062 were based on the following facts, as outlined in the criminal complaint:

- m. On January 5, 2015, Respondent provided a urine sample as part of her bond conditions in case 2014CM502.
- n. The urine sample provided did not register a temperature and had abnormal oxidant level.
- o. Respondent was requested to provide another urine sample but left without providing the sample.

10. On May 18, 2015, Respondent was convicted of two counts of bail jumping for Portage County case numbers 2015CM062 and 2015CM063. The two counts from case number 2014CM502 were dismissed but read in.

11. Based on the above convictions, Respondent was sentenced to:

- p. Thirty days in jail for each count to run consecutively (stayed) with Huber privileges;
- q. Twelve months of probation for each count;
- r. Pay costs;
- s. AODA and comply with treatment recommendations;

- t. Maintain absolute sobriety with regard to alcohol and illegal drugs;
- u. Use only one pharmacy to obtain prescriptions and disclose the pharmacy to her agent;
- v. Disclose prescriptions prescribed to her agent immediately;
- w. Engage and comply with other counseling recommendations by the agent; and
- x. Sign releases.

12. On February 29, 2016, during the course of this investigation, Respondent provided a brief note from Marletta Kern, A.P.N.P, which stated that Respondent had been on Adderall since May 2, 2012.

13. Respondent failed to report either of the above convictions to the Department as required by law.

Facts Related to Default

14. The Complaint and Notice of Hearing in this matter were served on Respondent on October 7, 2016, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing instructed Respondent: "If you do not provide a proper Answer within 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. On October 27, 2016, the ALJ issued a Notice of Telephone Prehearing Conference which set a telephone pre-hearing conference for November 9, 2016.

17. At the November 9, 2016 conference, Respondent was given additional time, until November 21, 2016, to file an Answer. The ALJ set a telephone status conference for December 1, 2016.

18. Respondent failed to file an Answer by the extended deadline.

19. At the conference held on December 1, 2016, the parties indicated they may be able to resolve the matter or, at a minimum, file a stipulation of facts. An additional telephone conference was scheduled for February 14, 2017 at 10:00 a.m. Notice of such was sent to both parties.

20. At the time scheduled for the February 14, 2017 conference, the ALJ attempted to contact Respondent but received her answering machine. The ALJ left a voicemail for Respondent, instructing her to telephone the ALJ by 10:15 a.m., failing which the conference

would proceed without her. Respondent failed to contact the ALJ, and the conference was held with counsel for the Division, who moved for default based on Respondent's failure to file an Answer and failure to appear for the February 14, 2017 conference.

21. On February 14, 2017, 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 February 28, 2017.

22. On February 27, 2017, the Division filed its submission.

23. Respondent did not file 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 February 14, 2017 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 February 14, 2017. 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 committed "[o]ne or more violations of this subchapter or any rule adopted by the board under the authority of this subchapter" or has committed "[m]isconduct or unprofessional conduct," it may "revoke, limit, suspend or deny a renewal of a license of a practical nurse" Wis. Stat. § 441.07(1g)(b) and (d), respectively.

Wisconsin Admin. Code § N 7.03 sets forth grounds for taking disciplinary action against a nurse. Under this code provision, a nurse may be disciplined for "[f]ailing to notify the board of a felony or misdemeanor in writing within 48 hours after entry of the judgment of conviction or finding," Wis. Admin. Code § N 7.03(1)(h), and "[o]btaining, possessing or attempting to obtain or possess a drug without lawful authority." Wis. Admin. Code § N 7.03(8)(e).

As shown in the facts set forth above, Respondent violated these provisions. As a result of this conduct, she is subject to discipline under 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 serious nature of Respondent's unprofessional conduct and her irresponsible conduct in this proceeding demonstrate that she requires significant rehabilitation and that her ability to safely practice nursing may be jeopardized by substance abuse issues. Therefore, a reprimand is

appropriate, with limitations imposed on Respondent's license for a period of two years to ensure that she practices nursing safely and effectively.

The discipline imposed against Respondent must include drug testing to determine whether Respondent is taking non-prescribed medications or illegal drugs, and if so, the extent of such use. Drug testing for a substantial period is the only way that the Board will know if Respondent has ingested any medications that are not prescribed to her or are otherwise illegal.

In order to further rehabilitate Respondent and protect the public, Respondent should be required to provide this order to all nursing employers to ensure she is adequately monitored and that any unusual behavior can be brought to the attention of the Board or its designee. Additionally, Respondent should be restricted to work in Wisconsin pursuant to the Nurse Licensure Compact during the pendency of the limitations because otherwise monitoring becomes too difficult.

Such discipline comports with prior decisions by the Board in similar situations. For example, in *In the Matter of Disciplinary Proceedings Against Kimberly Hughes, L.P.N.*, 0004958 (Oct. 13, 2016), a nurse, while on duty, was observed to have difficulty finishing her sentences and complained of abdominal pain. She was taken to the emergency department and underwent a urine screen. The urine screen was positive for tetrahydrocannabinol (THC). The Board reprimanded the nurse and limited her license for two years. Her license limitations included enrolling and participating in a drug monitoring program with random drug testing of not less than 49 times per year, providing a copy of the order to her employer, providing acknowledgment from her employer that the employer had reviewed a copy of the order, practicing only in a work setting pre-approved by the Board, practicing only in Wisconsin during the pendency of the limitations and paying costs.

Similarly, in *In the Matter of Disciplinary Proceedings Against Andrea Connelly, L.P.N.*, 0004419 (Dec. 10, 2015), a nurse, while on duty, was slurring her words, and her writing was illegible. In addition, she was found to have diverted cyclobenzaprine from a facility where she was working, ingested hydrocodone which was not prescribed to her and made documentation errors with regard to controlled substances at two different facilities. The Board reprimanded the nurse and limited her license for two years. Her license limitations included undergoing an AODA assessment and fitness for duty assessment, enrolling and participating in a drug monitoring program with random drug testing of not less than 49 times per year, providing a copy of the order to her employer, providing acknowledgment from her employer that the employer has reviewed a copy of the order, practicing only in a work setting pre-approved by the Board, practicing only in Wisconsin during the pendency of the limitations and paying costs.

Based on the facts of this case, the criteria set forth in *Aldrich*, and prior Board decisions, it is appropriate to impose the discipline set forth in the Order section below.

Costs

The Department 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 Department 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. The Department has also, in previous orders, considered many factors when determining if all or part of the costs should be assessed against a Respondent. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS0802183 CHI) (Aug. 14, 2008). It is within the Department'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.

Respondent's failure to participate in these proceedings negates any mitigation of imposing the full costs of this matter. Respondent's conduct is of a serious nature. The factual allegations were deemed admitted and there is no argument to indicate any factual findings and litigation were unnecessary. The Division has proven all counts alleged. The Division is seeking a reprimand with significant limitations of Respondent's nursing license. Respondent has failed to cooperate with the disciplinary process. By nature of being in default, Respondent has made no argument concerning whether costs should be assessed against her. Furthermore, 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 HEREBY ORDERED:

1. Respondent is REPRIMANDED.
2. Respondent's license to practice nursing in the State of Wisconsin and her privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact are LIMITED as follows:
 - a. For a period of at least two years from the date of this Order:
 - i. Respondent shall enroll and participate in a drug monitoring program which is approved by the Department (Approved Program).
 - ii. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
 1. Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 2. Production of a urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five hours of notification of a test.

3. The Approved Program shall require the testing of specimens at a frequency of not less than 24 times per year, until Respondent gains employment.
 4. Respondent must notify the Department Monitor of employment at least 10 days prior to beginning work.
 5. Immediately after Respondent is employed, the Approved Program shall require the testing of specimens at a frequency of not less than 49 times per year, for one year.
- iii. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose her drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.
 - iv. Respondent shall report to the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within 24 hours of ingestion or administration of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.
 - v. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that she may take from time to time. Over-the-counter medications and drugs that mask the consumption of controlled substances, create false positive screening results, or interfere with Respondent's treatment and rehabilitation, shall not be taken unless ordered by a physician, in which case the drug must be reported as described in the paragraph 2(a)iv.
 - vi. All positive test results are presumed valid and may result in automatic suspension of licensure by the Board or the Board's designee. Respondent must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.
 - vii. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances,

Respondent shall promptly submit to additional tests or examinations as the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.

- viii. Respondent shall practice only in a work setting pre-approved by the Board or its designee.
- ix. Respondent shall provide her nursing employer with a copy of this Order before engaging in any nursing employment.

3. 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 of Nursing and the regulatory board in the state in which Respondent proposes to practice.

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 of the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin on March 10, 2017.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Jennifer E. Nashold
Administrative Law Judge