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Before the
State Of Wisconsin
Board of Nursing

In the Matter of Disciplinary Proceedings Against
Tracy J. Burtis, R.N., Respondent

FINAL DECISION AND ORDER

Order No. 0005364

Division of Legal Services and Compliance Case No. 15 NUR 629

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 13th day of July, 2017.

Heidi Kruse
Member

Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Tracy J. Burtis, R.N., Respondent

DHA Case No. SPS-17-0009
DLSC Case No. 15 NUR 629

PROPOSED DECISION AND ORDER

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

Tracy J. Burtis, R.N.
325 School Street
Rockton, IL 61072-2927

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 Tracy J. Burtis, R.N. (Respondent), alleging that Respondent violated Wis. Admin. Code § N 7.03(1)(c), by, after a request by the Wisconsin Board of Nursing (Board), failing to cooperate in a timely manner with the Board's investigation of a complaint filed against her.

The Division served Respondent on February 16, 2017, by sending a copy of the Notice of Hearing and Complaint to Respondent's last known address. Respondent failed to file an Answer to the Complaint as required by Wis. Admin. Code § SPS 2.09, and failed to appear at the telephone prehearing conference held before the undersigned Administrative Law Judge (ALJ) on March 22, 2017.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to appear at the prehearing conference, the ALJ found Respondent to be in default. On March 22, 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 April 11, 2017. Consistent with the notice, the Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-20 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Tracy J. Burtis, R.N., is licensed in the State of Wisconsin as a professional nurse, having license number 102181-30, first issued on August 25, 1989, and current through February 28, 2018.

2. Respondent's most recent address on file with the Department is 325 School Street, Rockton, Illinois 61072-2927.

3. At all times relevant to this proceeding, Respondent was employed as a professional nurse at a home health agency (Agency), located in Madison, Wisconsin.

4. On December 1, 2015, the Department mailed a letter to Respondent at her address of record with the Department (332 Glenwood Avenue, South Beloit, Illinois 61080) requesting a written response to the allegations of a complaint made against her.

5. On December 15, 2015, the letter was returned to the Department with a forwarding address of 325 School Street, Rockton, Illinois 61072-2927.

6. On December 28, 2016, the Department sent the same letter to Respondent's forwarding address requesting a response no later than January 13, 2016.

7. On January 21, 2016, Respondent updated her address with the Department.

8. On January 21, 2016, Respondent left a voicemail for a Department intake worker.

9. The intake worker returned Respondent's call, but could not leave a message because Respondent's voicemail box was full.

10. Respondent sent an email to the intake worker stating that she had just received the complaint and the date for a response was past due.

11. On January 22, 2016, the intake worker sent a reply email to Respondent giving her permission to submit her response at this time.

12. On January 28, 2016, the intake worker sent another email to Respondent requesting a response to the allegations.

13. On February 5, 2016, a Department investigator sent an email to Respondent requesting her response to the allegations by February 19, 2016.

14. On November 3, 2016, a Department investigator emailed Respondent informing her of the complaint and several attempts by the Department to obtain a response from her regarding the allegations and her failure to cooperate with the investigation.

15. On the same day, a Department investigator mailed another letter to Respondent via certified mail requesting a response by November 17, 2016.

16. On the same day, a Department investigator left a voice message for Respondent.

17. On December 2, 2016, the November 3, 2016 certified letter was returned to the Department because Respondent failed to claim the letter.

18. On December 20, 2016, the Department sent another letter to Respondent via certified mail requesting a response no later than January 4, 2017.

19. On January 24, 2017, the December 20, 2016 certified letter was returned to the Department because Respondent failed to claim the letter.

20. As of February 2, 2017, Respondent has failed to respond to requests for information and has failed to cooperate with the Board's investigation.

Facts Related to Default

21. The Complaint and Notice of Hearing in this matter were served on Respondent on February 16, 2017, 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 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."

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

23. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for March 22, 2017. 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 17, 2017. 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."

24. Respondent failed to provide a telephone number, as required by Wis. Admin. Code § HA 1.07(3)(c). At the prehearing conference held on March 22, 2017, the Division provided a telephone number for Respondent, whereupon the ALJ left a voicemail for Respondent indicating that Respondent should contact the ALJ at the telephone number provided, failing which the ALJ would proceed with the conference without Respondent. However, Respondent failed to contact the ALJ.

25. 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.

26. On March 23, 2017, the ALJ issued a Notice of Default and Order which required the Division to file and serve no later than April 11, 2017, a recommended proposed decision and order.

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

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the March 23, 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 March 22, 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 registered nurse has violated Chapter 441, subchapter I, of the Wisconsin Statutes or any rule adopted by the Board under the authority of that subchapter, or that the nurse has committed unprofessional conduct, it may revoke, limit, or suspend the nurse's license or may reprimand the nurse. Wis. Stat. §§ 441.07(1g)(b) and (d), respectively.

Pursuant to Wis. Admin. Code § N 7.03(1)(c), the Board may take disciplinary action against a licensed nurse if after a request of the Board, the nurse "fail[s] to cooperate in a timely manner[]" with the board's investigation of a complaint filed" against the nurse.

On several occasions between 2015 and 2017, the Department, on behalf of the Board, requested information from Respondent by both regular mail and email regarding a complaint which had been made against her. Despite being given numerous extensions to provide the requested information, Respondent failed to respond. As a result, Respondent violated Wis. Admin. Code § N 7.03(1)(c).

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).

Respondent repeatedly refused to respond to the Department’s requests for information regarding a complaint filed against her. Although the Division has not provided any information regarding the underlying complaint, Respondent’s refusal to cooperate with the Board is serious conduct in and of itself. The Board is charged with the duty of ensuring that nurses are capable of safely and competently practicing their professions of caring for vulnerable people. The Board cannot make such assurances to the public if nurses refuse to cooperate with the Board. A reprimand is necessary in this case to promote public safety, rehabilitate Respondent, and deter others from ignoring requests from the Board.

In order to further promote rehabilitation, the discipline imposed against Respondent must include a requirement that she complete education on nurse practice acts. Respondent has failed to cooperate with the Board’s investigation by failing to respond to multiple requests by email and regular mail from the Department for information. This lack of cooperation shows disregard for the Board’s authority and impedes the Board’s ability to thoroughly investigate allegations of misconduct.

Because Respondent has failed to provide information sufficient to ensure that she may safely and reliably practice, in order to protect the public, Respondent must be required to work under direct supervision for two years, provide quarterly work reports, notify all employers of the disciplinary order (with written acknowledgement of receipt by employer) and notify the Department of any changes in employment. The direct supervision and quarterly reports will promote public safety and Respondent’s rehabilitation by providing accountability and ensuring Respondent’s cooperation and compliance. For these same reasons, Respondent’s practice will be limited to Wisconsin.

The Division also requests that Respondent be barred from working in a home health, assisted living, agency, or pool setting or as a nurse in a correctional setting. Because the Division has not provided any information regarding the underlying complaint or any other information which demonstrates the need for such limitations, these limitations are not imposed here. The two Board cases offered by the Respondent in support of such limitations are distinguishable from the instant case because in those cases, there was evidence of substance abuse or of illegally providing controlled substances to others, whereas no such evidence exists in this case. See *In the Matter of Disciplinary Proceedings Against Jacob F. Kummer, R.N.*, 0004649 (April 14, 2016); and *In the Matter of Disciplinary Proceedings Against Alicia R. Underwood, R.N.*, 0003976 (May 14, 2015).

Costs

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. The Board has also, in numerous previous orders, considered many factors when determining if all or part of the costs should be assessed against a Respondent. 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 cooperation of the respondent; (5) any prior discipline; and (6) the fact that the Department is a program revenue agency, funded by other licensees. See e.g. *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, LS 0802183 CHI (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 the count alleged. The factual allegations were deemed admitted and there is no argument to indicate any factual findings and litigation were unnecessary. In addition, Respondent's actions are serious in nature and show a blatant disregard of the law and rules governing her nursing license. The Division is seeking a reprimand and limitations of Respondent's professional nursing license in the State of Wisconsin. Moreover, Respondent has failed to cooperate with the Board's investigation and disciplinary process. 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 these proceedings.

ORDER

Accordingly, IT IS HEREBY ORDERED:

1. Respondent Tracy J. Burtis, R.N., is REPRIMANDED.
2. Respondent's practical nursing license and her privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact, are LIMITED as follows:
 - a. Within 90 days of the date of this Order, Respondent, at her own expense, shall complete four hours of education on the topic of nurse practice acts. Respondent is responsible for finding an appropriate course and submitting the course information to the Board or its designee for approval prior to taking the course and in sufficient time to obtain Board approval within the 90 day time frame, taking into account the Board's meeting schedule. Respondent shall provide proof of completion of the education to the Department Monitor.
 - b. Respondent shall provide her nursing employer with a copy of this Order before engaging in any nursing employment. 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 14 days of beginning new employment and/or within 14 days of the date of this Order for employment current as of the date of this Order.

- c. For a period of at least two years while working at least half-time as a nurse, Respondent shall work only under direct supervision, and only in a work setting pre-approved by the Board.
- d. For a period of at least two years while working at least half-time as a nurse, Respondent shall arrange for her nursing employer(s) to send to the Department Monitor quarterly reports, reporting the terms and conditions of Respondent's employment and evaluating her work performance.
- e. 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.
- f. Respondent shall notify the Department Monitor of any change of nursing employment during the time in which the Order is in effect. Notification shall occur within 15 days of a change of employment and shall include an explanation of the reasons for the change.
- g. After two years of working at least half-time as a nurse, Respondent may petition the board for the modification or termination of the limitation. The Board may grant or deny the petition, in its discretion, or may modify this Order as it sees fit.

3. Requests for approval of courses and work settings, proof of successful course completion, quarterly work reports, and acknowledgement that her employers received a copy of the order shall be sent by Respondent to the Department Monitor at the address below:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

4. 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 the address in paragraph 3, above.

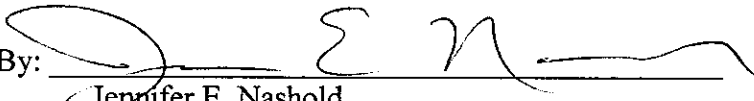
5. In the event Respondent violates any term of this Order, Respondent's license or Respondent's right to renew her license, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board may, in addition, refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

6. 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 10, 2017.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Tel. (608) 266-7709
Fax (608) 264-9885

By:


Jennifer E. Nashold
Administrative Law Judge