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

In the Matter of Disciplinary Proceedings Against
Jessica J. Gollon, R.N., Respondent

FINAL DECISION AND ORDER

Order No. **0005588**

Division of Legal Services and Compliance Case No. 16 NUR 590

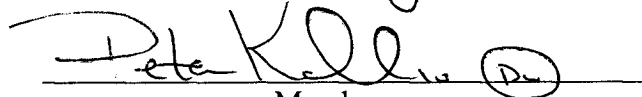
The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 11th day of ~~December~~, 2017.
January 2018



Member
Board of Nursing



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

In the Matter of Disciplinary Proceedings Against
Jessica J. Gollon, R.N., Respondent

DHA Case No. SPS-17-0024
DLSC Case No. 16 NUR 590

PROPOSED DECISION AND ORDER

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

Jessica J. Gollon, R.N.
601B Fourth Avenue
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 HISTORY

These proceedings were initiated on October 4, 2017, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Jessica J. Gollon, R.N., alleging that Respondent engaged in unprofessional conduct by administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law, in violation of Wis. Admin. Code § N 7.04(2),¹ and by failing to notify the Department in writing of the date, place and nature of conviction within 48 hours after the entry of the judgment of conviction, in violation of Wis. Admin. Code § SPS 4.09(2) and Wis. Stat. § 440.03(13)(am).

¹ All references to Wis. Admin. Code § N 7.04 refer to the Code as it existed before August 1, 2014.

The Division served Respondent on October 4, 2017, by sending a copy of the Notice of Hearing and Complaint to her last known address on file with the Department (601B Fourth Avenue, Stevens Point, Wisconsin 54481), via certified and regular mail. Respondent failed to file an Answer to the Division's Complaint.

On October 27, 2017, the Notice of Hearing and Complaint sent by certified mail was returned to the Department after the U.S. Postal Service made multiple attempts to deliver the mail. The Notice of Hearing and Complaint sent by regular mail was not returned to the Department.

On October 24, 2017, the Administrative Law Judge (ALJ) issued a Notice of Telephone Prehearing Conference which set a telephone prehearing conference for November 7, 2017 and required Respondent to provide a phone number where she could be reached no later than November 3, 2017. Respondent failed to provide a telephone number and failed to appear at the prehearing conference, whereupon the Division moved for default judgment based on Respondent's failure to appear and failure to file an Answer to the Complaint.

On November 7, 2017, the ALJ issued a Notice of Default and Order, which found Respondent to be in default and required the Division to file a recommended proposed decision and order by November 22, 2017. On November 21, 2017, the Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-7 are taken from the Division's Complaint filed against Respondent in this matter.

1. Respondent Jessica J. Gollon, R.N. (DOB June 24, 1977), is licensed in the State of Wisconsin as a professional nurse, having license number 151159-30, first issued on July 22, 2005, and current through February 28, 2018.

2. Respondent's most recent address on file with Department is 601B Fourth Avenue, Stevens Point, Wisconsin 54481.

3. On July 18, 2014, in Portage County circuit court case number 2014CM0186, Respondent was convicted of one count of possessing or illegally obtaining a prescription, in violation of Wis. Stat. § 450.11(7)(h), a misdemeanor.

4. The above conviction was based on the following facts:

- a. On February 7, 2014, City of Plover police officers, City of Stevens Point detectives and Portage County Sheriff's Department detectives and deputies executed a search warrant on Respondent's residence in relation to a burglary suspect. Respondent was not the suspect.

- b. During the execution of the search warrant, Respondent and her friend arrived at the residence.
- c. Law enforcement searched Respondent's purse and found an oval gold-colored case containing seven pink round tablets with "229" on them and four tablets of Xanax (alprazolam) 2 mg.
- d. Respondent admitted to law enforcement that the burglary suspect had given her a gaming system.
- e. During the search of Respondent's residence, law enforcement found the following:
 - i. A gold colored decorative box on the living room table containing three tablets of Adderall XR 20 mg and one tablet of Xanax;
 - ii. One "snort tube" (used for snorting powder substances), the inside of which contained a powdery residue; and
 - iii. One 8-inch bong, commonly used for smoking marijuana, located in Respondent's bedroom.
- f. Respondent admitted to law enforcement that she does not have a prescription for Adderall or Xanax.

5. Respondent failed to timely report this conviction to the Department in writing of the date, place and nature of conviction within 48 hours after entry of the judgment of conviction.

6. Adderall is a combination of dextroamphetamine and amphetamine. Pursuant to Wis. Stat. § 961.16(5)(a), an amphetamine is a schedule II controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(2).

7. Xanax is a brand name for alprazolam. Pursuant to Wis. Stat. § 961.20(2)(a), alprazolam is a schedule IV controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(3).

Facts Related to Default

8. The Notice of Hearing and Complaint in this matter were served on Respondent on October 4, 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."

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

10. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for November 7, 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 November 3, 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."

11. Respondent failed to provide a telephone number. At the prehearing conference held on November 7, 2017, at 11:00 a.m., the Division provided a telephone number for Respondent, at which the ALJ left a voicemail for Respondent indicating that Respondent should contact the ALJ at the telephone number provided by 11:15 a.m., failing which the ALJ would proceed with the conference without Respondent. However, Respondent failed to contact the ALJ.

12. 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.

13. On November 7, 2017, the ALJ issued a Notice of Default and Order which required the Division to file and serve, no later than November 22, 2017, a recommended proposed decision and order.

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

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the November 7, 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 prehearing conference held on November 7, 2017. *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

Following an investigation and disciplinary hearing, the Wisconsin Board of Nursing (Board) may "revoke, limit, suspend or deny a renewal of a license of a registered nurse" if it 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 engaged in misconduct or unprofessional conduct. Wis. Stat. § 441.07(1g)(b) and (d), respectively.

Respondent violated Wis. Admin. Code § N 7.04(2), by administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law. Police found several controlled substances in Respondent's residence that she did not have lawful authority to possess. A prescription is required in order to possess Adderall or Xanax. Respondent did not have a prescription for either of these medications that were found in her

possession. Respondent was subsequently convicted of possession or illegally obtaining a prescription.

Respondent violated Wis. Admin. Code § SPS 4.09(2) and Wis. Stat. § 440.03(13)(am) by failing to notify the Department in writing of the date, place and nature of conviction within 48 hours after entry of the judgment of conviction. On July 18, 2014, Respondent was convicted of one count of possession or illegally obtaining a prescription, in violation of Wis. Stat. § 450.11(7)(h). Respondent did not report this conviction to the Department within 48 hours of the entry of judgment of conviction.

As a result of the above violations, Respondent is 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 Division recommends that Respondent be reprimanded and that her license be limited in the manner set forth in the order section below. The Division's recommended discipline is adopted in this case. In order to promote rehabilitation, the discipline imposed against Respondent should include drug and alcohol testing to ensure that Respondent is abstaining from all drug and alcohol use. Testing is the only way that the Board will know if Respondent has ingested any medications that are not prescribed to her and ensure Respondent is not ingesting any alcohol. Respondent has unlawfully obtained prescriptions in the past and had illicit drug paraphilia found in her home. Due to her failure to participate in these proceedings, the extent of her substance abuse issues cannot be determined, nor can it be determined whether her substance abuse also includes excessive alcohol use. Respondent's alcohol use needs to be prohibited and monitored to ensure she does not replace use of illicit drugs with alcohol abuse after she is prohibited from controlled and illicit substance use. Respondent should also provide a copy of all over-the-counter medications and prescribed medications she takes because the medications may contain alcohol or other substances that her drug testing may detect.

Respondent's past treatment history is unknown based on her failure to cooperate and participate in these proceedings. Therefore, it is necessary to require an AODA assessment, have Respondent show a copy of the order to the assessor, comply with treaters' recommendations, and keep releases on file with the treaters so that the Department Monitor and Board can assess if additional limitations and treatment are necessary.

Because it is unknown where Respondent obtained the Xanax and Adderall, Respondent should not have access to controlled substances. There is the possibility that Respondent obtained these drugs illegally from her employer. As a nurse, Respondent would have access to controlled substances. Therefore, it is imperative that Respondent be prohibited from having access to controlled substances and that her employer submit an acknowledgment when she

begins new employment and on a quarterly basis to ensure that Respondent does not have access to controlled substances.

Respondent should be reprimanded in order to deter other licensees from similar conduct.

In order to protect the public, Respondent should also be required to provide the 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 to ensure successful monitoring.

This discipline is consistent with that imposed by the Board in similar cases. For example, in *In the Matter of Disciplinary Proceedings Against Karyn M. Kaiser L.P.N.*, Order No. 0003782 (Mar. 12, 2015),² a nurse, Karyn Kaiser, diverted oxycodone and hydrocodone and was subsequently convicted of obtaining a prescription drug by fraud. The Board reprimanded Ms. Kaiser and limited her license. Ms. Kaiser's license limitations included enrolling and participating in a drug monitoring program with random drug testing of not less than 49 times per year, abstaining from use of controlled substances except when prescribed, notifying the Department Monitor of all prescribed medications as well as use of any over-the-counter medications, showing a copy of the order to her employers, being prohibited from working in a setting where she has access to controlled substances, obtaining an AODA assessment and complying with all the recommendations of the assessor, arranging for quarterly work reports from her supervisor and practicing only in Wisconsin during the pendency of the limitations.

Ms. Kaiser obtained oxycodone and hydrocodone without a lawful purpose and was charged criminally for her conduct. In the instant case, Respondent also obtained medications without a lawful purpose and was charged criminally. In both cases, treatment histories are unknown. These cases are directly related and therefore Respondent should also be reprimanded and have all of the same license limitations placed on her license as those ordered in *Kaiser*.

Moreover, in *In the Matter of Disciplinary Proceedings Against Julie F. Rabe, R.N.*, Order No. 003300 (July 10, 2014),³ a nurse, Julie Rabe, tested positive for hydromorphone and did not have a valid prescription for the medication. In that case, Ms. Rabe was also disciplined in another state for inappropriate medication administration and documentation practices. The Board limited her license. Ms. Rabe's license limitations included enrolling and participating in a drug monitoring program with random drug testing of not less than 49 times per year, abstaining from personal use of controlled substances, notifying the Department Monitor of all prescribed medications as well as use of any over-the-counter medications, practicing only in Wisconsin during the pendency of the limitations, and completing education on documentation and medication administration.

²A copy of that order can be found at <https://online.drl.wi.gov/decisions/2015/ORDER0003782-00010968.pdf>.

³A copy of that order can be found at <https://online.drl.wi.gov/decisions/2014/ORDER0003300-00010028.pdf>.

Ms. Rabe obtained hydromorphone without a valid prescription. In this case, Respondent obtained Xanax and Adderall without a prescription. Therefore, Respondent should have similar license limitations placed on her license as those imposed on Ms. Rabe.

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. Boards and the Department have also, in 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 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.

Respondent should be assessed all of the costs of this proceeding. The Division has proven all counts alleged. The factual allegations were deemed admitted and there is no argument to indicate any factual findings or litigation were unnecessary. Respondent’s conduct is of a serious nature. Accordingly, the Division is seeking a reprimand with significant limitations on 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 that:

1. Respondent Jessica J. Gollon, R.N., is REPRIMANDED.
2. The professional nursing license issued to Jessica J. Gollon, R.N. (license number 151159-30), 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. Within 60 days from the date of this Order, Respondent shall, at her own expense, undergo an AODA assessment with an evaluator pre-approved by the Board or its designee who has experience conducting these assessments.

- b. Prior to the assessment, Respondent shall provide a copy of this Order, the criminal complaint and the judgment of conviction to the evaluator. Respondent shall provide the Department Monitor with written acknowledgment from the evaluator that a copy of this Order, the criminal complaint and the judgment of conviction have been received by the evaluator. Such acknowledgment shall be provided to the Department Monitor prior to the assessment.
- c. 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 releases shall immediately be filed with the Department Monitor.
- d. Respondent shall identify and provide the evaluator with authorizations to communicate with all physicians, mental health professionals, and facilities at which Respondent has been treated or evaluated.
- e. The Board may impose additional limitations upon Respondent's license based on the results of the assessment and/or the evaluator's recommendations.
- f. Respondent shall comply with the evaluator's recommendations.
- g. 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). Enrollment shall occur within 30 calendar days from the date of this Order.
 - 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 49 times per year, for at least the first year of this Order. Thereafter, the Board may adjust the frequency of testing on its own initiative at any time.
- 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 Respondent's 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(g)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. 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.
- x. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances. Respondent shall provide the Department Monitor with written acknowledgment from each nursing employer that Respondent does not have access to controlled substances. Such acknowledgement shall be provided to the Department Monitor within 14 days from the date of this Order for any current employer and on a quarterly basis thereafter from each nursing employer.

3. Pursuant to Uniform Nurse Licensure Compact regulations, Respondent's nursing practice is limited to Wisconsin during the pendency of these limitations. 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.

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 the 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. The Board may also refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

5. The Board or its designee may terminate the 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. After the first 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 consecutive years of successful compliance, Respondent may petition the Board for return of full licensure. The Board may grant or deny any petition, in its discretion, or may modify this Order as it sees fit.

7. Within 120 days from the date of this Order, Respondent shall pay costs of this matter.

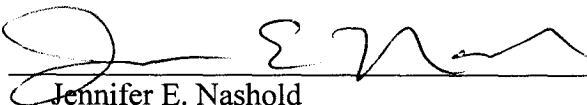
8. Any reports, documents, request for approval of an evaluator and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent to the Department Monitor at the address below:

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

9. The terms of this Order are effective the date the Final Decision and Order is signed by the Board.

Dated at Madison, Wisconsin on November 30, 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