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

In the Matter of Disciplinary Proceedings Against
Rochelle A. Current, R.N., Respondent

FINAL DECISION AND ORDER

Order No. 76238

Division of Legal Services and Compliance Case No. 16 NUR 613

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 13 day of June, 2019.

A stylized, handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Member
Board of Nursing



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

In the Matter of Disciplinary Proceedings Against
Rochelle A. Current, R.N., Respondent

DHA Case No. SPS-18-0044
DLSC Case No. 16 NUR 613

PROPOSED DECISION AND ORDER

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

Rochelle A. Current
913 S. 7th Street
La Crosse, WI 54601

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

The proceedings were initiated on October 23, 2018, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal complaint against Respondent Rochelle A. Current, R.N. (Respondent), alleging that Respondent violated Wis. Admin. Code § N 7.03(1)(h) by failing to report a conviction within 48 hours after entry of the judgment of conviction, and that she engaged in unprofessional conduct in violation of Wis. Admin. Code § N 7.03(1)(b)¹ by having a license to practice nursing or a nurse licensure compact privilege to practice denied, revoked, suspended, limited, or having been otherwise disciplined in another state, territory, or country.

The Division served Respondent on October 23, 2018, by sending a copy of the Notice of Hearing and Complaint to 13 South 7th Street, La Crosse, Wisconsin 54601, via certified and regular mail. The Division received both mailings back as undeliverable on November 5, 2018. On November 5, 2018, the Division corrected the address and re-served the Respondent at her last known address on file with the Division (913 South 7th Street, La Crosse, Wisconsin 54601),

¹ Wisconsin Admin. Code § N 7.03 does not actually refer to “unprofessional conduct.”

via certified and regular mail. Both mailings were returned undeliverable to the Division on November 19, 2018.

At the expiration of the 20-day time period to file an Answer, and following due notice, the Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for November 28, 2018, at which Respondent failed to appear. At that time, the Division moved for default based on Respondent's failure to appear and failure to file an Answer, pursuant to Wis. Admin. Code § SPS 2.14 and § HA 1.07(3). On December 3, 2018 the ALJ issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order by February 15, 2019. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-10 are set forth in the Division's Complaint against Respondent filed in this matter.

1. Respondent Rochelle A. Current, R.N., is licensed in the State of Wisconsin as a registered nurse, having license number 131001-30, first issued on November 3, 1998. Respondent's license expired on February 28, 2018, and has not been renewed.

2. Respondent retains the right to renew her license upon payment of a late renewal fee through February 28, 2023.

3. Respondent's most recent address on file with the Department is 913 South 7th Street, La Crosse, Wisconsin 54601.

4. On April 9, 2009, Respondent was convicted in La Crosse County Circuit Court case number 2008CT019 of operating a motor vehicle while under the influence (3rd), a class U misdemeanor, in violation of Wis. Stat. § 346.63(1)(a).

5. Respondent failed to report the April 9, 2009 conviction for operating a motor vehicle while under the influence (3rd) to the Department.

6. On June 19, 2018, Respondent was convicted in La Crosse County Circuit Court case number 2018CM317, of one count of bail jumping, a class A misdemeanor, in violation of Wis. Stat. § 946.49(1)(a).

7. Respondent failed to report the June 19, 2018 conviction for bail jumping to the Department.

8. On June 19, 2018, Respondent was convicted in La Crosse County Circuit Court case number 2015CM912, of one count of operating under the influence of a restricted controlled substance (4th), a class U misdemeanor, in violation of Wis. Stat. § 346.63(1)(am).

9. Respondent failed to report the June 19, 2018 conviction for operating under the influence of a restricted controlled substance (4th) to the Department.

10. On October 6, 2016, the Arkansas State Board of Nursing (Arkansas Board) issued an order against Respondent to cease and desist the practice of nursing in the State of Arkansas based on the following findings of fact:

- a. On June 30, 2016, the Arkansas Board received a complaint regarding Respondent's practice at a rehabilitation and health care center (Center) located in Van Buren, Arkansas. Respondent was practicing in Arkansas under her Wisconsin license pursuant to the Nurse Licensure Compact.
- b. The complaint stated that on June 28, 2016, three allegations of abuse/neglect involving three different residents were made against Respondent:
 - i. Respondent threatened to throw Resident D.P.'s medications away if the resident didn't stop requesting them;
 - ii. Respondent threatened to deny care, to close the resident's door, and to send her to the "nut house" if Resident M.T. didn't stop calling for help; and
 - iii. When Resident M.S. bumped into Respondent, Respondent stated, "Try it again and see what happens."
- c. Respondent appeared to be under the influence of an unknown substance as she was escorted from the Center.
- d. The Center counted the controlled substances on Respondent's medication cart and documented the following missing narcotics: one Percocet 10/325 mg, one Norco 10/325 mg, and one Xanax 1 mg.
- e. On July 5, 2016, Respondent's employment was terminated by the Center due to missing medications and verbal abuse to residents.

Facts Related to Default

11. The Notice of Hearing and Complaint in this matter were served on Respondent on November 5, 2018, 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 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."

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

13. Following expiration of the 20-day time period in which to file an Answer, the ALJ scheduled a telephone prehearing conference for November 28, 2018, at 10:00 a.m. Notice of this prehearing conference was sent to both parties, using the address on file for Respondent, with instructions that Respondent provide the ALJ with a telephone number at which she could

be reached for the conference. The Notice instructed Respondent: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent." Respondent failed to provide a telephone number.

14. On November 19, 2018, the prehearing notice sent to Respondent was returned to the Division of Hearings and Appeals (DHA) by the U.S. Postal Service with a stamp indicating that the address was unknown and that the mail could not be forwarded.

15. On November 28, 2018, the prehearing conference was held with the Division. 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 10:45 a.m., failing which the ALJ would proceed with the conference without Respondent. When Respondent failed to contact the ALJ, the ALJ reconvened the conference with the Division, which moved for default based on Respondent's failure to file an Answer to the Complaint and failure to appear. The ALJ granted the Division's motion.

16. On December 3, 2018, the ALJ issued a Notice of Default and Order which required the Division to file and serve, no later than February 15, 2019, a recommended proposed decision and order.

17. On December 10, 2018, the default notice sent to Respondent was returned to DHA by the U.S. Postal Service with a stamp indicating that the address was unknown and that the mail could not be forwarded.

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

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the December 3, 2018 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 November 28, 2018. *See* Wis. Admin. Code § SPS 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

Following an investigation and disciplinary hearing, if the Wisconsin Board of Nursing (Board) determines that a registered 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 the registered nurse. Wis. Stat. § 441.07(1g)(b) and (d), respectively.

The undisputed facts establish that on April 9, 2009, Respondent was convicted of operating a motor vehicle while under the influence (3rd), a class U misdemeanor, in violation of Wis. Stat. § 346.63(1)(a). On June 19, 2018, Respondent was convicted of bail jumping, a class A misdemeanor, in violation of Wis. Stat. § 946.49(1)(a). On that same date, Respondent was

also convicted of operating under the influence of a restricted controlled substance (4th), a class U misdemeanor, in violation of Wis. Stat. § 346.63(1)(am). Respondent failed to report any of these convictions to the Department or Board, in violation of Wis. Admin. Code §§ SPS 4.09(2) and N 7.03(1)(h).²

In addition, on October 6, 2016, the Arkansas Board issued an order against Respondent to cease and desist the practice of nursing in the State of Arkansas based on a complaint Arkansas received regarding Respondent. The complaint alleged that on June 28, 2016, while Respondent was practicing nursing in Arkansas at a rehabilitation and health care center under her Wisconsin license pursuant to the Nurse Licensure Compact, she engaged in abuse/neglect involving three different residents at the Center as follows: (1) Respondent threatened to throw Resident D.P.'s medications away if the resident didn't stop requesting them; (2) Respondent threatened to deny care, to close Resident M.T.'s door, and to send her to the "nut house" if Resident M.T. didn't stop calling for help; and (3) when Resident M.S. bumped into Respondent, Respondent stated, "Try it again and see what happens." In addition, Respondent appeared to be under the influence of an unknown substance as she was escorted from the Center. The Center documented that narcotics were missing from Respondent's medication cart. She was subsequently terminated from employment with the Center due to missing medications and verbal abuse to residents. Based on this conduct, Respondent violated Wis. Admin. Code § N 7.03(1)(b), by having a license to practice nursing or a nurse licensure compact privilege to practice denied, revoked, suspended, limited, or having the credential holder otherwise disciplined in another state, territory, or country.

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 credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent's right to renew her license and privilege to practice under the Enhanced Nurse Licensure Compact be revoked. The recommended discipline is consistent with the purposes articulated in *Aldrich*. Although promoting rehabilitation is one of the purposes of discipline, rehabilitation seems unlikely in this case. Respondent has refused to cooperate in these proceedings. Having obtained no information from Respondent during the pendency of this matter, the Board cannot ascertain whether any rehabilitative measures would be effective. Further, Respondent's refusal to cooperate in this disciplinary matter demonstrates a lack of respect for the Board's authority.

² Wisconsin Admin. Code § SPS 4.09(2) provides: "A holder of any of the credentials set forth in s. SPS 4.07 who is convicted of a felony or misdemeanor in this state or elsewhere shall notify the department in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction." Wisconsin Admin. Code § N 7.03(1)(h) provides that the Board may take disciplinary against a credential holder for "[f]ailing to notify the board of a felony or misdemeanor in writing within 48 hours after the entry of the judgment of conviction, including the date, place, and nature of the conviction or finding."

Moreover, Respondent's conduct was egregious and significantly endangers the public. "Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a license is granted to an individual, Wisconsin is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the state cannot assure the public of the licensee's competence to practice the profession, then revocation is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189–90, 349 N.W.2d 68 (1984).

Revocation of Respondent's right to renew her license and privilege to practice nursing is necessary to protect the public from other instances of misconduct. Registered nurses are licensed to care for the sick and injured, a vulnerable population. The Arkansas Board disciplined Respondent based on a complaint that she was intoxicated while on duty and verbally abused and/or neglected the patients for whom she entrusted to care. Respondent has demonstrated that she is not fit to be a registered nurse. Revocation is also necessary to deter other licensees from engaging in similar conduct. Patient abuse and neglect is serious misconduct, which cannot be tolerated. Revocation is an appropriate response to Respondent's disrespect for patient welfare, the law, and the licensing authority governing her profession.

Even though Respondent's license is currently expired, it is appropriate and necessary to impose discipline. Wisconsin Stat. § 440.08(3)(a) allows the holder of a credential to restore the credential even after expiration by simply paying the application renewal fee and a late renewal penalty of \$25. The Department is empowered with the ability to promulgate rules requiring credential holders who have failed to renew the credential for five years to complete additional requirements to restore their licenses. *See* Wis. Stat. § 440.08(3)(b). Read together, these provisions have been interpreted by the Department to mean that credential holders retain a right to automatically renew their credentials within five years of expiration by simply paying the required fees. Thus, Respondent has an automatic right to renew her license until February 28, 2023. Even though Respondent's license is expired, the fact that she retains a right to renew makes the reasoning for discipline against active licensees equally appropriate for expired licensees.

Finally, the discipline imposed is consistent with prior Board decisions. *See e.g., In the Matter of Disciplinary Proceedings Against Stephanie Y. Gaines, L.P.N.*, SPS-15-0086 (Apr. 29, 2016)³ (Board revoked nurse's right to renew her license and privilege to practice nursing pursuant to the Nurse Licensure Compact for failure to cooperate with Board's investigation after complaint that nurse took financial advantage of a patient and was convicted for possession of narcotics and bail jumping); *In the Matter of Disciplinary Proceedings Against Kelly L. Kowalkowski, R.N.*, SPS-15-0093 (Mar. 18, 2016)⁴ (Board revoked nurse's right to renew her license and privilege to practice nursing pursuant to the Nurse Licensure Compact for failure to cooperate with an investigation by the Board after being charged with several drug-related offenses); *In the Matter of Disciplinary Proceedings Against Peggy Karr, L.P.N.*, Case No. LS9604033NUR (Sept. 12, 1996) (Board revoked nurse's license to practice practical nursing for verbal abuse of a patient, failing to respond to the patient's call light, and instructing certified nursing assistants working under her not to respond to the call light).⁵

³ This decision is available on-line at <https://online.drl.wi.gov/decisions/2016/ORDER0004686-00012624.pdf>.

⁴ This decision is available on-line at <https://online.drl.wi.gov/decisions/2016/ORDER0004613-00012486.pdf>

⁵ This decision is available on-line at <https://online.drl.wi.gov/decisions/1996/ls9604033nur-00075827.pdf>

In light of the facts of this case, the factors set forth in *Aldrich*, and prior Board decisions, it is appropriate to revoke Respondent's right to renew her license and privilege to practice registered nursing in Wisconsin under the Enhanced Nurse Licensure Compact.

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. In previous orders, Boards have considered the following factors when determining if all or part of the costs should be assessed against a Respondent: (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.

The following facts are particularly relevant to the instant case. First, by virtue of Respondent's default, the factual allegations were deemed admitted in this matter, the Division has proven all counts alleged, and there is no argument to indicate any litigation in this proceeding was unnecessary. Second, Respondent's conduct that led to the discipline at hand resulted from disciplinary action taken against her in another state which was based on complaints of abuse and/or neglect of patients and being intoxicated while on the job as a nurse. Respondent also failed to report her convictions in a timely manner. All of this conduct is serious. Third, as a result of Respondent's serious conduct, the Division sought, and was granted, revocation of Respondent's right to renew her license and privilege to practice pursuant to the Enhanced Nurse Licensure Compact, a significant level of discipline. Fourth, Respondent failed to file an Answer to the Complaint and failed to appear at the November 28, 2018 prehearing conference, demonstrating a lack of cooperation. Fifth, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. As such, fairness weighs heavily in requiring Respondent to pay the costs of this proceeding which resulted in significant discipline, rather than spreading the costs among all Board of Nursing licensees in Wisconsin. Finally, Respondent has made no argument concerning the imposition of costs. Based on all of these considerations, it is appropriate to impose the full costs of this proceeding on Respondent.

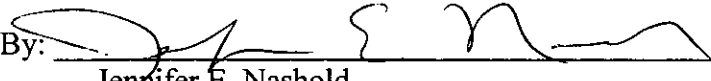
ORDER

Accordingly, it is hereby ORDERED that the right to renew the license and the privilege of Rochelle A. Current (license number 131001-30) to practice as a nurse in the State of Wisconsin under the Enhanced Nurse Licensure Compact are REVOKED, effective on the date the final decision is signed by the Board.

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.

Dated at Madison, Wisconsin on April 24, 2019.

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By: 
Jennifer E. Nashold
Administrative Law Judge