

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscga>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov



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

In the Matter of Disciplinary Proceedings Against
Ann M. Lenck, R.N., Respondent

FINAL DECISION AND ORDER

Order No. **ORDER 000627 1**

Division of Legal Services and Compliance Case No. 17 NUR 463

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 11 day of July, 2019.

A handwritten signature in black ink, appearing to be 'M. Lenck', written over a horizontal line.

Member
Board of Nursing



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Ann M. Lenck, R.N., Respondent

DHA Case No. SPS-19-0020
DLSC Case No. 17 NUR 463

PROPOSED DECISION AND ORDER

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

Ann M. Lenck, R.N.
5988 Sugarbush Lane
Greendale, WI 53129

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

PROCEDURAL HISTORY

The proceedings were initiated on March 5, 2019, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal complaint against Respondent Ann M. Lenck, R.N. (Respondent), alleging that Respondent engaged in unprofessional conduct by practicing without an active license, in violation of Wis. Admin. Code § N 7.03(1)(d); and by violating any term, provision, or condition of any order of the Board, in violation of Wis. Admin. Code § N 7.03(1)(g).

The Division served Respondent on March 5, 2019, by sending a copy of the Notice of Hearing and Complaint to 5988 Sugarbush Lane, Greendale, Wisconsin 53129, via certified and regular mail. Respondent did not file an Answer as required.

Upon expiration of the 20-day time period to file an Answer, the Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for April 16, 2019. Notice of the prehearing conference was mailed to the Respondent on March 25, 2019, and instructed Respondent to provide the ALJ a telephone number at which she could be reached for the conference no later than April 12, 2019. Respondent failed to provide a telephone number and failed to appear for the prehearing conference. The Division moved for default based on Respondent's failure to file an Answer and failure to appear, pursuant to Wis. Admin. Code § SPS 2.14 and § HA 1.07(3).

On April 16, 2019, the ALJ issued a Notice of Default and Order against Respondent which ordered the Division to file a recommended proposed decision and order by May 7, 2019. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-9 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent is licensed in the State of Wisconsin as a registered nurse, having license number 94812-30, first issued on August 22, 1986, and indefinitely suspended by the Wisconsin Board of Nursing (Board) on July 27, 2017. Respondent's license to practice as a registered nurse expired on February 28, 2018.

2. Respondent's most recent address on file with the Department is 5988 Sugarbush Lane, Greendale, Wisconsin 53129.

3. At all times relevant to this proceeding, Respondent was employed as a registered nurse at a facility (Facility), located in Milwaukee, Wisconsin.

4. On July 27, 2017, the Board indefinitely suspended Respondent's license (license no. 94812-30) in DHA Case No. SPS-16-0026, DLSC Case No. 14 NUR 692.

5. Respondent continued working as a registered nurse after her license was suspended, including working on July 29, 2017; July 30, 2017; July 31, 2017; August 5, 2017; August 6, 2017; August 8, 2017; August 9, 2017; August 10, 2017; August 11, 2017; August 14, 2017; August 15, 2017; August 16, 2017; August 17, 2017; August 18, 2017; August 21, 2017; and August 22, 2017.

6. Respondent received compensation for hours worked as a registered nurse after the Board indefinitely suspended her license.

7. Respondent failed to notify the Facility of the suspension of her license.

8. On August 22, 2017, the Facility terminated Respondent's employment.

Facts Related to Default

9. The Notice of Hearing and Complaint in this matter were served on Respondent on March 5, 2019, by both certified and First Class 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.”

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

11. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for April 16, 2019. 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. 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.”

12. Respondent failed to provide a telephone number. During the prehearing conference on April 16, 2019, the Division provided a telephone number for Respondent, at which the ALJ left a message for Respondent allowing her 15 minutes to return the call. Respondent failed to contact the ALJ. The ALJ therefore granted the Division’s motion for default based on failure to file an Answer and failure to appear, pursuant to Wis. Admin. Code § SPS 2.14 and § HA 1.07(3).

13. On April 16, 2019, the ALJ issued a Notice of Default and Order which required the Division to file and serve, no later than May 7, 2019, a recommended proposed decision and order.

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

15. Respondent did not file a response to the Notice of Default and Order or to the Division’s recommended proposed decision and order.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the April 16, 2019, 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 April 16, 2019. *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. *Id.*

Violations

The Board may revoke, limit, suspend, or deny renewal of a license of a registered nurse if it finds that the licensee has engaged in “[o]ne or more violations of this subchapter or any rule adopted by the board under the authority of this subchapter” or has committed misconduct or unprofessional conduct. Wis. Stat. § 441.07(1g)(b) and (d), respectively.

The Division alleges that Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code § N 7.03(1)(d), by practicing without an active license; and pursuant to Wis. Admin. Code § N 7.03(1)(g), by violating any term, provision, or condition of any order of the Board. The undisputed facts support the violations alleged.

The facts establish that on July 27, 2017, the Board indefinitely suspended Respondent’s nursing license in DHA Case No. SPS-16-0026, DLSC Case No. 14 NUR 692. Despite the suspension of her license to practice nursing, Respondent continued working as a registered nurse on July 29, July 30, July 31, August 5, August 6, August 8, August 9, August 10, August 11, August 14, August 15, August 16, August 17, August 18, August 21, and August 22, 2017. Respondent received compensation for hours worked as a registered nurse after the Board indefinitely suspended her license. Accordingly, Respondent practiced nursing without an active license, violating Wis. Admin. Code § N 7.03(1)(d). Further, Respondent violated the prior Board order suspending her license to practice nursing, in violation of Wis. Admin. Code § N 7.03(1)(g).

As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (d).

Appropriate 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 her privilege to practice under the Enhanced Nurse Licensure Compact be revoked. The recommended discipline is consistent with the purposes articulated in *Aldrich*. Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is unlikely in this case, as Respondent has refused to cooperate in these proceedings, was already under an Order that sought to rehabilitate her, and failed to comply with that Order.

“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, the Board 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 Board 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). Here, the Board cannot assure the public that Respondent will practice nursing safely, when she has practiced with an inactive license, disregarded the Board’s Order, and failed to cooperate in this proceeding.

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 and deter others from engaging in such conduct. Respondent was previously disciplined by the Board, which resulted in suspension of her license. However, she continued to practice nursing without an active license on multiple occasions. Licensees need to know this conduct will not be tolerated. Imposing anything less than revocation would not sufficiently protect the public, given Respondent’s disregard the law, the public welfare, and the licensing authority governing her profession. Finally, the recommended discipline is consistent with Board precedent. *See In the Matter of Disciplinary Proceedings Against David J. Mueller, R.N.*, LS0303191NUR (June 6, 2003) (Board revoked license of nurse who practiced nursing without an active nursing license and failed to cooperate with the Board’s investigation of his conduct).¹

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

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, the Division proved the counts it alleged. This is not a case where the Division wasted resources or incurred additional costs by alleging multiple counts and then failing to prove those counts. Second, Respondent’s conduct that led to the discipline at hand resulted from her failure to comply with a Board order and from practicing nursing without a valid license. Such conduct is serious. Third, as a result of Respondent’s serious conduct, the Division sought to revoke Respondent’s right to

¹ This decision is attached to the Division’s recommended proposed decision and order and may also be found on-line at <https://online.drl.wi.gov/decisions/2003/l0303191nur-00072697.pdf>.

renew her license and privilege to practice pursuant to the Enhanced Nurse Licensure Compact. The level of discipline sought is significant and was granted in this case. Fourth, Respondent failed to cooperate in any way in these proceedings. 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 licensees in Wisconsin. Finally, Respondent has failed to present any argument as to why full costs should not be assessed.

As a result, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings, in an amount to be determined under Wis. Admin. Code § SPS 2.18.

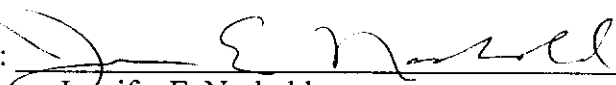
ORDER

Accordingly, it is hereby ORDERED that the license and privilege of Ann M. Lenck, R.N. (license number 94812-30), 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 June 11, 2019.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Tel. (608) 266-7709
Fax (608) 264-9885

By: 
Jennifer E. Nashold
Administrative Law Judge