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

In the Matter of Disciplinary Proceedings Against
Makesha M. Thomas, R.N., Respondent

FINAL DECISION AND ORDER

Order **ORDER 0006474**

Division of Legal Services and Compliance Case No. 17 NUR 223

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 10 day of October, 2019.

Member
Board of Nursing



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

In the Matter of Disciplinary Proceedings Against
Makesha M. Thomas, R.N., Respondent

DHA Case No. SPS-18-0041
DLSC Case No. 17 NUR 223

PROPOSED DECISION AND ORDER

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

Makesha M. Thomas
25314 Oak Knot Road
Spring, TX 77389-4021

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 M. Kennedy
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 October 17, 2018, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal complaint against Respondent Makesha M. Thomas, alleging that Respondent engaged in unprofessional conduct by fraudulently obtaining a credential when she submitted fraudulent transcripts to Arizona College to earn a Bachelor of Nursing degree, in violation of Wis. Admin. Code § N 7.03(5)(e); by obtaining a credential by fraud when she submitted fraudulent information to the Wisconsin Board of Nursing (Board) in application for a nursing credential in Wisconsin, in violation of Wis. Admin. Code § N 7.03(5)(e); and by failing to cooperate in a timely manner with an investigation of a complaint filed against a license holder, in violation of Wis. Admin. Code § N 7.03(1)(c).

The Division attempted to serve Respondent on October 17, 2018, by sending a copy of the Notice of Hearing and Complaint to the address on file with the Department: 8910 North 95th Street, Apartment G, Milwaukee, Wisconsin 53224, via certified and regular mail. That mail was returned undeliverable. The Division served Respondent on October 29, 2018, by sending a copy of the Notice of Hearing and Complaint to two other addresses found for Respondent: 7205 West McDowell Road, Apartment 1073, Phoenix, Arizona 85035-4551, and 25314 Oak Knot Drive, Spring, Texas 77389-4021. Both mailings were sent via certified and regular mail.

At the expiration of the 20-day time period to file an Answer, the Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for November 20, 2018. Notice of the prehearing conference was mailed to Respondent on November 6, 2018, instructing Respondent to provide the ALJ with a telephone number no later than November 16, 2018, at which she could be reached for the conference. Respondent provided a telephone number. During the prehearing conference on November 20, 2018, the ALJ granted Respondent an extension until November 27, 2018 to file an Answer to the Complaint and a new prehearing conference was scheduled for December 6, 2018. Respondent filed an Answer on November 27, 2018.

A telephone status conference was scheduled for February 11, 2019. Due to a scheduling conflict, the conference was rescheduled to March 11, 2019. On March 11, 2019, a prehearing conference was held, and the ALJ issued a scheduling order directing the parties to file and exchange witness lists, exhibits, and exhibit lists by June 14, 2019. A contested hearing was scheduled for August 1, 2019 at 10:00 a.m. Respondent was permitted to appear by telephone for the hearing.

On August 1, 2019, the contested hearing convened at 10:00 a.m. Respondent was called at the number on file with the Department. Respondent did not answer and a voicemail could not be left. At 10:03 a.m., Respondent was called at the number on file with the ALJ. Respondent did not answer and a message was left instructing Respondent to call back at the telephone number provided by the ALJ within the next 15 minutes. The ALJ also stated in the voicemail message that if Respondent failed to appear, the Division may request a default judgment. After 15 minutes, Respondent was called again at the number on file with the ALJ. Respondent did not answer, and a second message was left stating that the hearing would proceed without her.

After leaving the second message for Respondent, the ALJ went on the record. The Division moved for default based upon Respondent's failure to appear via telephone for the hearing, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3). The ALJ granted the Division's motion and found Respondent in default. The ALJ ordered the Division to file a proposed decision and order no later than September 6, 2019. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

1. Respondent Makesha M. Thomas is licensed in the state of Wisconsin as a professional nurse, having license number 231655-30, first issued on October 13, 2016, and current through February 28, 2020.

2. Respondent's most recent address on file with the Department is 8910 North 95th Street, Apartment G, Milwaukee, Wisconsin 53224.
3. On or about August 23, 2013, Respondent applied to the Arizona Board of Nursing (AZBON) for certification as a nursing assistant. The AZBON reviewed Respondent's criminal history and conducted an investigation based on the information received. The investigation found the following:
 - a. On or about April 1, 2013, Respondent applied for entry into a nursing program (Program) in Phoenix, Arizona, and signed a transcript authorization release form permitting the release of her academic transcript from Xavier University of Louisiana. The application indicated Respondent received a bachelor's degree from Xavier University of Louisiana.
 - b. On or about April 15, 2013, the Program received correspondence containing a purported academic transcript from Xavier University of Louisiana. The school seal on the envelope did not match the school seal on the transcript.
 - c. On or about December 19, 2013, the AZBON received a letter from the Xavier University of Louisiana Registrar stating there was no record of Respondent ever attending Xavier University of Louisiana.
4. On September 15, 2016, the AZBON voted to deny Respondent certification as a nursing assistant.
5. Arizona College learned of the above investigation and its findings on the AZBON website. This information prompted Arizona College to conduct an investigation as Respondent earned a bachelor's degree in nursing from Arizona College in December 2015.
6. Arizona College reviewed the transcript Respondent submitted with her application for enrollment. The transcript was also from Xavier University of Louisiana. This transcript also contained a school seal that differed from the school seal on the envelope. The envelope, which bears the school seal and a return address in New Orleans, Louisiana, was postmarked in Phoenix, Arizona.
7. On February 14, 2017, Arizona College received confirmation from Xavier University of Louisiana that no one by Respondent's name attended their institution and the transcript was fraudulent.
8. On March 1, 2017, Arizona College rescinded Respondent's Arizona College School of Nursing bachelor's degree.
9. Respondent was granted a license to practice professional nursing in Wisconsin on October 13, 2016. As part of her application, Respondent provided proof of her degree from Arizona College. This degree is the same degree that was rescinded by Arizona College on March 1, 2017.

10. On July 31, 2018, the Division requested a response from Respondent via email and letter to the addresses on file with the Department. Respondent called the Division the same day to confirm details of the email she received.
11. On August 8, 2018, the Division sent a follow up email to Respondent's address on file.
12. On August 14, 2018, the letter sent to Respondent on July 31, 2018, was returned undeliverable.
13. On August 20, 2018, a phone call was made to the number on file with the Department. The line went dead during the call.

Facts Related to Default

14. On March 11, 2019, a prehearing conference was held by ALJ Jennifer Nashold. Following the conference, ALJ Nashold issued a prehearing conference report and scheduling order.
15. Based upon the agreement of the parties at the prehearing conference, a contested hearing was scheduled for August 1, 2019, commencing at 10:00 a.m., at the Department of Safety and Professional Services, Room N103, 4822 Madison Yards Way, Madison, Wisconsin. Though not addressed in the Order, the Division's attorney asserted that Respondent was granted the right to appear by telephone as she was residing in Texas.
16. On April 12, 2019, the parties were notified that this matter had been transferred to ALJ Sally Pederson for adjudication.
17. The parties were ordered to file and exchange witness lists, exhibits, and exhibit lists by June 14, 2019. The Division timely complied. Respondent did not file a witness list, exhibits, or exhibit list.
18. On August 1, 2019, the contested hearing convened at 10:00 a.m.
19. Respondent was called at the number on file with the Department. Respondent did not answer and a voicemail could not be left.
20. At 10:03 a.m., Respondent was called at the number on file with the ALJ. Respondent did not answer and a message was left instructing Respondent to call back within the next 15 minutes. The ALJ also stated in the message that if Respondent failed to appear, the Division may request a default judgment.
21. After 15 minutes, Respondent was called again at the number on file with the ALJ. Respondent did not answer and a message was left stating that the hearing would proceed without her.
22. After leaving the second message for Respondent, the ALJ convened the hearing and went on the record.

23. The Division moved for default based upon Respondent's failure to appear via telephone for the hearing, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3). The ALJ granted the Division's motion and found Respondent in default.
24. The ALJ ordered the Division to file and serve, no later than September 6, 2019, a recommended proposed decision and order.
25. The Division timely filed a recommended proposed decision and order.

DISCUSSION AND CONCLUSIONS OF LAW

Jurisdictional authority

Pursuant to Wis. Admin. Code § SPS 2.10(2), the undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1).

Default

Respondent is in default for failing to appear at the contested hearing on August 1, 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. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

Violations

Pursuant to Wis. Stat. § 441.07(1g)(a), (b), and (d), the Board possesses the authority to discipline any licensee or license holder for procuring a license by fraud, violating the standards of conduct established by the examining board under s. 440.03(1), Wis. Stats., and engaging in unprofessional conduct under Wis. Admin. Code §§ N 7.03(1)(c) and 7.03(5)(e).

Because Respondent failed to appear at the scheduled hearing, Respondent is in default and the ALJ may take the allegations in the Complaint as true and enter an order on the basis of the complaint. *See* Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(b).

The undisputed facts in this matter as set forth in the Complaint are as follows. On or about August 23, 2013, Respondent applied to the Arizona Board of Nursing (AZBON) for certification as a nursing assistant. The AZBON reviewed Respondent's criminal history and conducted an investigation based on the information received. The investigation found that, on or about April 1, 2013, Respondent applied for entry into a nursing program (Program) in Phoenix, Arizona, and signed a transcript authorization release form permitting the release of her academic transcript from Xavier University of Louisiana (Xavier). The application indicated Respondent received a bachelor's degree from Xavier.

On or about April 15, 2013, the Program received correspondence containing a purported academic transcript from Xavier. The school seal on the envelope did not match the school seal on the transcript. On or about December 19, 2013, the AZBON received a letter from the Xavier Registrar stating there was no record of Respondent ever attending Xavier.

On September 15, 2016, the AZBON voted to deny Respondent certification as a nursing assistant. Arizona College learned of the above investigation and its findings on the AZBON website. This information prompted Arizona College to conduct an investigation as Respondent earned a bachelor's degree in nursing from Arizona College in December 2015. Arizona College reviewed the transcript Respondent submitted with her application for enrollment. The transcript was also from Xavier. This transcript also contained a school seal that differed from the school seal on the envelope. The envelope, which bears the school seal and a return address in New Orleans, Louisiana, was postmarked in Phoenix, Arizona. On February 14, 2017, Arizona College received confirmation from Xavier that no one by Respondent's name attended their institution and the transcript was fraudulent. On March 1, 2017, Arizona College rescinded Respondent's Arizona College School of Nursing bachelor's degree.

Respondent was granted a license to practice professional nursing in Wisconsin on October 13, 2016. As part of her application, Respondent provided proof of her degree from Arizona College. This degree is the same degree that was rescinded by Arizona College on March 1, 2017.

On July 31, 2018, the Division requested a response from Respondent via email and letter to the addresses on file with the Department. Respondent called the Division the same day to confirm details of the email she received.

On August 8, 2018, the Division sent a follow up email to Respondent's address on file. On August 14, 2018, the letter sent to Respondent on July 31, 2018, was returned undeliverable. On August 20, 2018, a phone call was made to the number on file with the Department. The line went dead during the call.

By the conduct described above, Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code § N 7.03(5)(e), and is in violation of Wis. Stat. § 441.07(1)(g), by obtaining a credential by fraud when she submitted fraudulent transcripts to Arizona College to earn the Bachelor of Nursing degree., Respondent also engaged in unprofessional conduct as defined by Wis. Admin. Code § N 7.03(5)(e), by obtaining a credential by fraud when she submitted fraudulent information to the Wisconsin Board of Nursing in application for a nursing credential in Wisconsin. In addition, Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code § N 7.03(1)(c), by failing to cooperate in a timely manner with an investigation of a complaint filed against a license holder.

As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(a), (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 license and 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 not plausible in this case, as Respondent has not received the proper education and training necessary for her credential. Possessing a bachelor's degree in nursing is a prerequisite for applying for a nursing credential in Wisconsin. Respondent submitted fraudulent transcripts in order to receive a bachelor's degree in nursing, which shows a willful disregard for honesty, trustworthiness, and concern for the health and welfare of future potential patients in her care.

"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 license and privilege to practice nursing are necessary to protect the public from other instances of misconduct. Registered nurses are licensed to provide skilled nursing care. However, Respondent did not complete the requisite education necessary to obtain her credential; therefore, there is no way to assure the public that Respondent has the skills necessary to complete the duties expected of her. Accordingly, revocation remains the only appropriate way in which to safeguard the public.

Moreover, revocation of Respondent's license and privilege to practice under the Enhanced Nurse Licensure Compact in this case is necessary to deter others from engaging in similar unethical conduct. Allowing Respondent to retain her credential sends the message to others that it is acceptable to submit fraudulent documents to institutions of higher education to meet the requirements necessary to earn a degree that, in turn, are used to earn a credential.

Respondent also refused to cooperate with the Board related to a disciplinary matter. By doing so, Respondent demonstrated a lack of respect for the Board's authority. Respondent failed to cooperate throughout the Department's investigation and with this proceeding. Licensees need to know this conduct will not be tolerated. The Board cannot assure the public of Respondent's competency, and as such, Respondent is not fit to be licensed as a registered nurse. Therefore, revocation of Respondent's right to renew her license is an appropriate response in light of her disrespect for the law, public welfare, and the licensing authority governing the nursing profession.

Accordingly, I find revocation of Respondent's license and privilege to practice registered nursing in Wisconsin under the Enhanced Nurse Licensure Compact is warranted.

Costs

As a result of revocation, 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 Department and professional boards have also, in previous orders, 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 Respondent's cooperation with the disciplinary process; 5) prior discipline, if any; 6) the fact that the Department is a program revenue agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and, 7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, Order LS0802183CHI (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.

Here, the Division proved all counts 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. In addition, Respondent's conduct is serious; she submitted fraudulent transcripts in order to earn a degree that was required for her to gain her credential. Third, as a result of Respondent's serious conduct, the Division sought to revoke Respondent's license and privilege to practice pursuant to the Enhanced Nurse Licensure Compact. The level of discipline sought is significant and recognizes the need to publicly warn Respondent and deter others.

Moreover, Respondent failed to cooperate with the Department during the initial investigation of the allegations and failed to appear via telephone for the contested hearing on August 1, 2019. Further, the Department of Safety and Professional Services 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 made no argument concerning whether costs should be assessed against her. When Respondent fails to argue a position, the Division is not obliged to make the argument for them.

Using *Noesen* as guidance and applying the Board's historical reasoning to the above facts, I find that 100 percent of the costs of this proceeding should be assessed against Respondent, with the amount of costs to be determined in accordance with Wis. Admin. Code § SPS 2.18.

ORDER

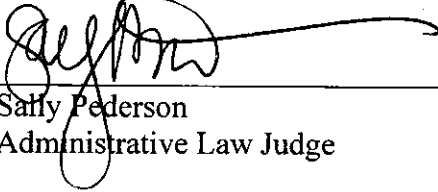
Therefore, for the reasons set forth above, IT IS HEREBY ORDERED that the license and privilege of Makesha M. Thomas (license number 231655-30) to practice as a nurse in the state of Wisconsin under the Enhanced Nurse Licensure Compact are REVOKED effective on the date the final decision is signed by 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 September 11, 2019.

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

By: _____


Sally Pederson
Administrative Law Judge