

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before the
State of Wisconsin
Board of Nursing

In the Matter of Disciplinary Proceedings Against
Lisa M. Micheau, L.P.N., Respondent

FINAL DECISION AND ORDER

Order No. **ORDER 0006737**

Division of Legal Services and Compliance Case No. 16 NUR 523

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 8th day of April, 2020.

Al Rohmeyer, *DSPS Chief*
Member *Legal Counsel,*
Board of Nursing *Delegatee*



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
LISA M. MICHEAU, L.P.N., Respondent

DHA Case No. SPS-19-0058
DLSC Case No. 16 NUR 523

PROPOSED DECISION AND ORDER

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

Lisa M. Micheau

[REDACTED]
Franksville, WI 53126

Wisconsin Board of Nursing
P.O. Box 8366
Madison, WI 53707-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Joost Kap
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 15, 2019, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal complaint against Respondent Lisa M. Micheau, L.P.N., alleging that she engaged in unprofessional conduct by practicing nursing while under the influence of alcohol, illicit drugs, or while impaired by the use of legitimately prescribed pharmacological agents or medications, in violation of Wis. Admin. Code § N. 7.03(6)(e); and by obtaining, possessing or attempting to obtain or possess a drug without lawful authority, in violation of Wis. Admin. Code § N 7.03(8)(e).

The Division served Respondent on October 15, 2019, by sending the Notice of Hearing and Complaint to her mailing and email addresses on file with the Department via certified,

electronic, and regular mail, pursuant to Wis. Admin. Code § SPS 2.08. The Division also served Respondent's former attorney, Roberto Ledesma,¹ on October 15, 2019, by sending a copy of the Notice of Hearing and Complaint by regular mail and electronic mail, pursuant to Wis. Admin. Code § SPS 2.08. Respondent was given 20 days from the date of service to file an Answer. Respondent failed to file an Answer.

At the expiration of the 20-day time period to file an Answer, the undersigned Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for November 19, 2019 and sent notice by electronic mail and U.S. mail to the Division and Attorney Ledesma.

The ALJ was subsequently notified that Attorney Ledesma was no longer representing Respondent. Accordingly, the ALJ rescheduled the prehearing conference to November 26, 2019 and sent notice thereof to the Division and Respondent via regular and electronic mail. The ALJ instructed Respondent to provide a telephone number for the November 26, 2019 prehearing conference and stated that "Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against Respondent."

Respondent failed to provide the ALJ with a telephone number and failed to appear at the November 26, 2019 prehearing conference. The ALJ attempted to contact Respondent using the number on file with the Department, but Respondent did not answer.

Consequently, the prehearing telephone conference was convened without Respondent, and 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 Division's motion and issued a Notice of Default and Order directing the Division to file and serve a recommended proposed decision and order by December 12, 2019. The Division timely filed and served its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

1. Respondent Lisa M. Micheau is licensed in the state of Wisconsin to practice practical nursing, having license number 307810-31, first issued on November 22, 2006, and current through April 30, 2021.
2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is located in Franksville, Wisconsin 53126.
3. At all times relevant to this proceeding, Respondent was employed as a practical nurse at a correctional facility located in Racine, Wisconsin (Facility).

¹ At the time, it was unclear whether Attorney Ledesma was still representing Respondent. Division counsel, Joost Kap, contacted Attorney Ledesma's office on several occasions to inquire if he would accept service for Respondent, but none of those contacts were returned. The Division therefore served both Respondent and Attorney Ledesma, whose office subsequently informed ALJ Pederson's office that he no longer represented Respondent.

4. On July 18, 2016, the Facility site manager was informed that a card of Librium was missing from the drug cart.
5. All employees of the Facility were subjected to a drug test, and Respondent tested positive for cocaine and morphine.
6. The Facility terminated Respondent's employment after being unable to reach her regarding her positive drug test results.

Facts Related to Default

7. The Notice of Hearing and Complaint were served on Respondent on October 15, 2019, via certified and first class mail and electronic mail at the addresses on file with the Department. *See* Wis. Admin. Code § SPS 2.08.

8. The Notice of Hearing stated:

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.

9. Respondent failed to file an Answer to the Complaint.
10. At the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for November 19, 2019 and sent notice thereof to the Division and Attorney Ledesma's office.
11. On November 19, 2019, Attorney Ledesma's office notified the ALJ's office that he no longer represented Respondent.
12. The ALJ rescheduled the telephone prehearing conference to November 26, 2019 and sent notice thereof to the Division and Respondent by electronic mail and U.S. mail. The notice instructed Respondent to provide the ALJ with a telephone number where she could be reached for the prehearing conference and stated that failure to appear may result in default judgment.
13. Respondent did not provide the ALJ with a telephone number and failed to appear for the November 26, 2019 telephone prehearing conference. Attempts to reach Respondent at her number on file with the Department were unsuccessful.
14. 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 Division's motion and, on November 27, 2019, issued a Notice of Default and Order directing the Division to file and serve a recommended proposed decision and order by December 12, 2019.
15. The Division timely filed and served its 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

By failing to file an Answer to the Complaint, Respondent violated Wis. Admin. Code § SPS 2.09(4). By failing to appear at the scheduled prehearing conference on November 26, 2019, Respondent is subject to default, as stated in the ALJ's Notice of Rescheduled Telephone Prehearing Conference. Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14.

Violations

Pursuant to Wis. Stat. §§ 441.07(1g)(b) and (d), the Wisconsin Board of Nursing (Board) possesses the authority to discipline any licensee or license holder for violating the standards of conduct established by the examining board under Wis. Stat. § 440.03(1) and for engaging in unprofessional conduct under Wis. Admin. Code §§ 7.03(6)(e) and 7.03(8)(e).

Because Respondent failed to file an Answer to the Complaint, Respondent is in default, and the ALJ may make findings and enter an order on the basis of the Complaint allegations. *See* Wis. Admin. Code § SPS 2.14. The undisputed facts in this matter are as set forth in the Complaint and in the Findings of Fact contained herein.

By the conduct described in paragraphs 3 through 6 of the Findings of Fact, Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code §§ N. 7.03(6)(e) and 7.03(8)(e) by practicing nursing while under the influence of alcohol, illicit drugs, or while impaired by the use of legitimately prescribed pharmacological agents or medications, and by obtaining, possessing or attempting to obtain or possess a drug without lawful authority.

As a result of the conduct described in the Findings of Fact and Complaint, 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 the license of Respondent Lisa M. Micheau and privilege to practice under the Enhanced Nurse Licensure Compact be suspended pursuant to the terms and conditions of the Order section below.

The recommended discipline is consistent with the purposes articulated in *Aldrich*. Promoting rehabilitation is one of the purposes of discipline. Respondent worked while under the influence of cocaine and morphine. Required supervision and monitoring will allow Respondent to maintain her license while she gets the necessary treatment to overcome these personal and professional issues.

“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, via the Department, cannot assure the public of the licensee’s competence to practice the profession, then suspension is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189–90, 349 N.W.2d 68 (1984). In the present case, the Board cannot assure the public that an individual who works while under the influence of drugs is competent or safe to practice. Her conduct at work potentially posed a danger to patients. The Board cannot ensure that Respondent will practice nursing safely if she is not monitored and required to participate in a treatment program.

The suspension of Respondent’s license and privilege to practice nursing, with a stay contingent on treatment and other conditions, are necessary to protect the public from other instances of misconduct. Respondent’s misconduct was serious and shows she is not safe or competent to practice of nursing.

Imposing anything less would not aid in deterrence but could imply that such conduct by a licensed nurse is tolerable. Accordingly, suspension of Respondent’s license and privilege to practice under the Enhanced Nurse Licensure Compact, along with treatment and other conditions, are necessary to deter other licensees from engaging in similar conduct and remains the only appropriate way in which to safeguard the public.

Based upon the facts of this case and the factors set forth in *Aldrich*, I find suspension of Respondent’s license and privilege to practice practical nursing in Wisconsin under the Enhanced Nurse Licensure Compact, as well as the conditions and limitations of the Order section below, are 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. *Noesenv. 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 considered the following factors when determining if all or part of the costs should be assessed against the 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*, 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.

Respondent defaulted, and the factual allegations were deemed admitted and, therefore, proven by the Department. Respondent's conduct involved street and prescription drugs and was serious in the potential threat it posed to patients under her care. The level of discipline sought is appropriate for the proven violations. Respondent has not cooperated with the disciplinary process. She failed to file an Answer to the Complaint and failed to appear at the rescheduled telephone prehearing conference.

Finally, 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. Accordingly, it is appropriate for Respondent to pay the full costs of the investigation and this proceeding, as determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

SUSPENSION

- A.1. The practical nurse license issued to Lisa M. Micheau, L.P.N., (license number 307810-31) to practice nursing in the state of Wisconsin, and her privilege to practice in Wisconsin pursuant to the Enhanced Nurse Licensure Compact, is **SUSPENDED** for an indefinite period.

STAY OF SUSPENSION

- B.1. The suspension of Respondent's Wisconsin nursing license may be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Respondent is in compliance with the provisions of Sections C and D of this Order.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in violation of any provision of this Order. The Board or its designee may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
- (a) Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services pursuant to Wis. Stat. § 440.11; or

(b) Actual notice to Respondent or Respondent's attorney.

- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, drug and alcohol treatment with a treater acceptable to the Board or its designee (Treater). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. While the Board has no authority over the Treater, the Board proposes that the Treater would be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, including reporting any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve in accordance with this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by D.5., below.
- C.5. Treater is requested to submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports should assess Respondent's progress in drug and alcohol treatment.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collection sites, current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Safety and Professional Services, Division of Legal Services and Compliance to: (a) obtain all specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and

rehabilitation with Treater, treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

Support Meetings

- C.7. Respondent shall attend sobriety support meetings for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified by the speaker or chair and reported quarterly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. 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, Treater and the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor. Respondent shall disclose the name and address of such practitioner to the Department Monitor within five business days of receipt of a prescription for controlled substances.
- C.10. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that they may take from time to time. Respondent shall abstain from all use of over-the-counter medications, products, or other substances (including but not limited to natural substances, such as poppy seeds or any products containing alcohol) which may mask consumption of controlled substances or alcohol, create false positive screening results, or otherwise interfere with Respondent's test results, treatment or rehabilitation, unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.11. It is Respondent's responsibility to educate herself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- C.11. Respondent shall report to Treater and the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within 24 hours of administration, fill or refill 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.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department (Approved Program).

- C.13. 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 and alcohol monitoring established by the Approved Program is a violation of this Order. The requirements shall include:
- (a) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b) Production of a urine, blood, sweat, nail, hair, saliva or other specimen at a collection site designated by the Approved Program within five hours of notification of a test.
- C.14. 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.
- C.15. If any urine, blood, sweat, nail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, 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.
- C.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional specimens; (b) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.
- C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.
- C.18. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- C.19. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances.
- C.20. Respondent shall practice only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee, who has received a copy of this Order.
- C.21. Respondent shall practice only in a work setting pre-approved by the Board or its designee. Requests for preapproval must be accompanied by a current job description, name and contact information of the direct supervisor, and written acknowledgment from the employer that a copy of this Order has been received and that the restrictions will be accommodated.

- C.22. Respondent may not work in a home health care, hospice, pool nursing, assisted living, agency, or as a nurse in a correctional setting.
- C.23. Prior to commencing practice, Respondent shall provide a copy of this Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a nurse or care giver or provides health care, currently or in the future.
- C.24. It is Respondent's responsibility to arrange for quarterly written reports to be submitted to the Department Monitor from his or her supervisor at each setting in which Respondent practiced nursing in the previous quarter. These reports shall be submitted as directed by the Department Monitor, and shall assess Respondent's work performance, and shall include the number of hours of active nursing practice worked during that quarter. If a report indicates poor performance, the Board may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion.
- C.25. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five days of the date of a change. This report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports, and other information required by this Order shall be mailed, e-mailed, faxed, or delivered to:

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

Information may also be submitted online via DSPS' Monitoring Case Management System at: www.dpsmonitoring.wi.gov.

Costs of Compliance

- D.2. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision, and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Additional Discipline

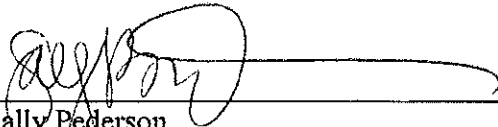
D.3. In addition to any other action authorized by this Order or law, the Board, in its discretion, may impose additional limitations or pursue separate disciplinary action for violation of any term of this Order.

IT IS FURTHER ORDERED that Respondent pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to the address listed in paragraph D.1. above.

IT IS FURTHER ORDERED that the terms of the Order are effective the date the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin, on January 22, 2020.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

By: 
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Administrative Law Judge
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