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Before the
State of Wisconsin
Board of Nursing

In the Matter of Disciplinary Proceedings Against
Robin T. Heffernan, R.N., Respondent

FINAL DECISION AND ORDER

Order No. ORDER 0006970

Division of Legal Services and Compliance Case No. 18 NUR 149

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 9th day of September, 2020.

Al. Rohmeyer

Member
Board of Nursing

DSPS Chief Legal Counsel,
Delegatee



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Robin T. Heffernan, R.N., Respondent

DHA Case No. SPS-20-0004
DLSC Case No. 18 NUR 149

PROPOSED DECISION AND ORDER

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

Robin T. Heffernan

[REDACTED]
Hudson, FL 34667

Robin T. Heffernan

[REDACTED]
La Crosse, WI 54601

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 Zachary Hetfield
Department of Safety and Professional Services
Division of Legal Services and Compliance
4822 Madison Yards Way, 2nd Floor
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

The proceedings were initiated on February 11, 2020, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal complaint against Respondent Robin T. Heffernan, alleging that Respondent had a license to practice nursing or a nurse licensure compact privilege to practice denied, revoked, suspended, limited, or had been disciplined in another state, territory, or country, in violation of Wis. Admin. Code § N 7.03(1)(b).

On February 11, 2020, the Division served a Notice of Hearing and Complaint on Respondent by sending it to her last known address at [REDACTED] Hudson, FL 34667, via certified and regular mail. Respondent was allowed 20 days from the date of service to file an Answer; however, no Answer was filed.

On March 5, 2020, the Division again served the Notice of Hearing and Complaint on Respondent by sending it to Respondent's address on file with the Department, [REDACTED] La Crosse, Wisconsin 54601, via certified and regular mail. Respondent again did not file an Answer within 20 days of the date of service.

At the expiration of the 20-day time period to file an Answer, Administrative Law Judge (ALJ) Sally Pederson scheduled a telephone prehearing conference for March 26, 2020. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which Respondent could be reached for the conference. Respondent did not provide a telephone number to the ALJ. On March 26, 2020, the ALJ attempted to contact the Respondent at the number provided by the Department, but Respondent did not answer. The ALJ left a voice mail message allowing Respondent 15 minutes to call back. Respondent did not call back. Consequently, the prehearing conference reconvened without Respondent, and the Division moved for default, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(b) and (c). In light of Respondent's failure to file an Answer to the Complaint and failure to appear at the prehearing conference, the ALJ found Respondent in default.

Accordingly, the ALJ issued a Notice of Default and Order on March 26, 2020, ordering the Division to file a recommended proposed decision and order by April 24, 2020. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-5 are taken from the Division's Complaint in this matter.

1. Respondent Robin T. Heffernan, is licensed in the state of Wisconsin to practice registered nursing, having license number 95874-30, first issued on January 30, 1987. This license expired on February 28, 2018 and has not been renewed. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew upon payment of a fee until February 27, 2023.
2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is [REDACTED] La Crosse, Wisconsin 54601.
3. On February 16, 2018, the Minnesota Board of Nursing issued a Final Order indefinitely suspending Respondent's registered nurse license for the following reasons:
 - a. Respondent failed to perform nursing with reasonable skill and safety, in violation of Minn. Stat. § 148.261, subd. 1(5).

- b. Respondent engaged in unprofessional conduct, including failure to conform to minimal standards of acceptable and prevailing nursing practice, in violation of Minn. Stat. § 148.261, subd. 1(6).
 - c. Respondent engaged in unethical conduct, including conduct likely to harm the public, and demonstrated a willful disregard for the health, welfare, or safety of a patient, in violation of Minn. Stat. § 148.261, subd. 1(11).
 - d. Respondent improperly managed patient records, in violation of Minn. Stat. § 148.261, subd. 1(16).
 - e. Respondent violated rules and orders of the Minnesota Board of Nursing relating to the practice of nursing, in violation of Minn. Stat. § 148.261, subd. 1(18).
 - f. Respondent failed to cooperate with an investigation of the Minnesota Board of Nursing in violation of Minn. Stat. §§ 148.261, subd. 1(22), and 148.265.
4. On April 9, 2019, the Arizona State Board of Nursing accepted Respondent's voluntary surrender of her Arizona registered nurse license to close an administrative complaint filed based on the discipline imposed by the Minnesota Board of Nursing.
 5. On April 23, 2019, the Florida Board of Nursing accepted Respondent's voluntary surrender of her Florida registered nurse license to close an administrative complaint filed based on the discipline imposed by the Minnesota Board of Nursing.

Facts Related to Default

6. The Notice of Hearing and Complaint were served on Respondent at her last known address at [REDACTED] Lot 68, Hudson, FL 34667, on February 11, 2020, 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."
7. Respondent failed to file an Answer to the Complaint.
8. The Notice of Hearing and Complaint were again served on Respondent at the last address on file with the Department, [REDACTED] La Crosse, Wisconsin 54601, on March 5, 2020, by both certified and first-class mail. 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."

9. Respondent again 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 March 26, 2020. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ a telephone number at which Respondent could be reached for the conference. Respondent did not provide a telephone number to the ALJ. On March 26, 2020, the ALJ attempted to contact the Respondent at the number provided by the Department; however, Respondent did not answer. The ALJ left a voice mail message allowing Respondent 15 minutes to call her back, but Respondent did not call back. The prehearing conference was then reconvened without Respondent, and the Division moved for default. In light of Respondent's failure to file an Answer to the Complaint and failure to appear at the prehearing conference, the ALJ found Respondent in default.
11. On March 26, 2020, the ALJ issued a Notice of Default and ordered that the Division file and serve a recommended proposed decision and order by April 24, 2020.
12. The Division timely filed 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). As stated in the March 26, 2020 Notice of Default and Order, Respondent is in default for failing to file an answer within the 20 day deadline and for failing to appear for the prehearing conference on March 26, 2020. *See* Wis. Admin. Code § SPS 2.14. *See also* Wis. Admin. Code HA 1.07(3)(b) and (c). Because Respondent is in default, the ALJ may take the allegations in the Complaint as true and enter an order on the basis of the Complaint. Wisconsin Admin. Code § SPS 2.14 provides that when a Respondent is in default, "the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence."

The undisputed facts in this matter as set forth in the Complaint are as follows:

On February 16, 2018, the Minnesota Board of Nursing issued a Final Order indefinitely suspending Respondent's registered nurse license for the following reasons: Respondent failed to perform nursing with reasonable skill and safety, in violation of Minn. Stat. § 148.261, subd. 1(5). Respondent engaged in unprofessional conduct, including failure to conform to minimal standards of acceptable and prevailing nursing practice, in violation of Minn. Stat. § 148.261, subd. 1(6). Respondent engaged in unethical conduct, including conduct likely to harm the public, and demonstrated a willful disregard for the health, welfare, or safety of a patient, in

violation of Minn. Stat. § 148.261, subd. 1(11). Respondent improperly managed patient records, in violation of Minn. Stat. § 148.261, subd. 1(16). Respondent violated rules and orders of the Minnesota Board of Nursing related to the practice of nursing, in violation of Minn. Stat. § 148.261, subd. 1(18). Respondent failed to cooperate with an investigation of the Minnesota Board of Nursing in violation of Minn. Stat. §§ 148.261, subd. 1(22), and 148.265.

On April 9, 2019, the Arizona State Board of Nursing accepted Respondent's voluntary surrender of her Arizona registered nurse license to close an administrative complaint file based on the Minnesota Board of Nursing discipline. On April 23, 2019, the Florida Board of Nursing accepted Respondent's voluntary surrender of her Florida registered nurse license to close an administrative complaint file based on the Minnesota Board of Nursing discipline.

Violations

By the conduct described above, Respondent engaged in unprofessional conduct as defined by 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 discipline in another state territory, or country. Specifically, Respondent's license to practice nursing was indefinitely suspended in the State of Minnesota. In addition, she voluntarily surrendered her nursing license in the State of Arizona to close an administrative complaint filed there on the basis of the Minnesota disciplinary action.

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 § N 7.03(1)(b). As a result of the conduct described herein, Respondent is subject to discipline by the Board.

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 has recommended that Respondent's right to renew her nursing license be revoked pursuant to the terms and conditions of the Order section below. For the reasons set forth below, I find that the recommended discipline is consistent with the purposes articulated in *Aldrich* and case law.

Promoting rehabilitation is one of the purposes of discipline. Respondent engaged in numerous acts that led to a long string of violations, which led to the Minnesota Board of Nursing suspending Respondent's license indefinitely. The Minnesota Board of Nursing made numerous findings regarding Respondent's ability to practice nursing. Respondent failed to perform nursing with reasonable skill and was unprofessional to the point of failing to meet the minimal standards of nursing practice. Respondent was also unethical and demonstrated a willful disregard towards her patients. In addition, Respondent demonstrated poor record-keeping abilities. Respondent's acts demonstrated a lack of deference and respect towards the licensing authority by violating Minnesota Board of Nursing's orders and by failing to cooperate with its

investigation. Respondent also did not respond to the Wisconsin Board of Nursing's complaint. Rehabilitation is not a viable option when Respondent has repeatedly shown that she is non-responsive to licensing boards. Revoking Respondent's right to renew keeps her from practicing nursing in Wisconsin without filing a full application and having her conduct reviewed by the Board.

"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 revocation 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 a registered nurse who, per the Minnesota Board of Nursing, cannot perform nursing safely, engages in unprofessional conduct, unethical conduct, and keeps poor records, will perform nursing in a safe, professional and ethical manner in Wisconsin.

Respondent's failure to respond or cooperate with the Minnesota Board of Nursing, and her failure to respond to the complaint that began this action, limits the Board's ability to protect the safety of the public. Despite repeated attempts from both the Department and the ALJ in this current matter, Respondent did not file an Answer or make an appearance by phone. Respondent has demonstrated that she does not take responsibility for her actions and has not shown respect for the authority of the Board which grants her license. This further demonstrates the need for a revocation as the only means left for the Board to hold Respondent accountable.

Revocation of Respondent's right to renew her license and privilege to practice nursing are necessary to protect the public from other instances of misconduct. As set forth previously, Respondent committed numerous violations while working as a registered nurse in Minnesota.

The recommended discipline is also consistent with Board precedent. *See In the Matter of Disciplinary Proceedings Against David W. Mitchell, R.N.*, Order Number 0005167 (February 9, 2017) (nurse who was investigated for departing from or failing to conform to the minimal standards of acceptable nursing practice creating unnecessary risk or danger to a patient, as he was no longer practicing in Wisconsin the Board accepted a voluntary surrender).¹ *See also In the Matter of Disciplinary Proceedings Against Marian E. Montana, L.P.N.*, Order Number 0004753 (June 9, 2016) (nurse had her license revoked by Illinois for failing to assess or provide life support, in the form of CPR, to a patient and the Board accepted a voluntary surrender).² *See also In the Matter of Disciplinary Proceedings Against Diane M. Marschall, R.N.*, (January 10, 2013) (nurse was indefinitely suspended by Minnesota Board of Nursing for failing to comply with a consent order and the Board accepted a voluntary surrender).³ *See also In the Matter of Disciplinary Proceedings Against Beverly M. Arndt, L.P.N.*, (April 2, 2009) (nurse did not assess or evaluate a patient and the Board accepted a voluntary surrender).⁴ *See also In the Matter of Disciplinary Proceedings Against Eileen K. Lee, R.N.*, (September 4, 2008) (nurse was convicted

¹ This decision is available online at: <https://online.drl.wi.gov/decisions/2017/ORDER0005167-00013506.pdf>

² This decision is available online at: <https://online.drl.wi.gov/decisions/2016/ORDER0004753-00012741.pdf>

³ This decision is available online at: <https://online.drl.wi.gov/decisions/2013/ORDER0002252-00008111.pdf>

⁴ This decision is available online at: <https://online.drl.wi.gov/decisions/2009/ls0904022nur-00077288.pdf>

of Neglect of a Patient Likely to Cause Great Bodily Harm, a felony, and had license revoked by the Board and was allowed to petition for reinstatement upon passing a mental health assessment).⁵ See also *In the Matter of Disciplinary Proceedings Against Sandra I. Hausz, R.N.*, (February 28, 2008) (nurse did not assess patient, failed to file an answer or appear at the pre-hearing conference and had license revoked by the Board with the ability to petition for a reinstatement after six hours of education credits are completed).⁶ See also *In the Matter of Disciplinary Proceedings Against Terry J. Cotts, R.N.*, (August 30, 2007) (nurse did not take or chart patient vitals, or notify anyone of patient declining condition and had license revoked by the Board with the ability to petition for a reinstatement after six hours of education credits are completed).⁷

Based upon the facts of this case and the factors set forth in *Aldrich*, as well as other cases involving similar conduct, I find that 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 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.

Here, because Respondent defaulted, the factual allegations were deemed admitted. Thus, the Division proved all counts alleged. Respondent's engaged in serious misconduct that constituted a blatant disregard of the law and rules governing her license. Respondent was found to be in violation of numerous rules governing the practice of nursing by the Minnesota Board of Nursing. These violations included unsafe practice of nursing, unethical conduct, unprofessional conduct, failure to keep proper records, and failure to cooperate with the Minnesota Board's investigation. Respondent voluntarily surrendered her license in two other states. In addition, Respondent failed to file an Answer to the Complaint and failed to appear at the prehearing conference. Finally, the Department is a program revenue agency whose operating costs are

⁵ This decision is available online at: <https://online.drl.wi.gov/decisions/2008/ls0802182nur-00077393.pdf>

⁶ This decision is available online at: <https://online.drl.wi.gov/decisions/2008/ls0711021nur-00069903.pdf>

⁷ This decision is available online at: <https://online.drl.wi.gov/decisions/2007/ls0702022nur-00072751.pdf>

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. Therefore, I find that it is appropriate for Respondent to pay the full costs of the investigation and this proceeding, as determined in accordance with Wis. Admin. Code § SPS 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that the right of Respondent Robin T. Heffernan to renew her license to practice nursing in the State of Wisconsin (no. 95874-30) and her privilege to practice under the Enhanced Nurse Licensure Compact are REVOKED.

IT IS FURTHER ORDERED that Respondent may not petition for reinstatement of her registered nurse license, pursuant to Wis. Stat. § 441.07(2), earlier than one year from the date of revocation.

In addition, IT IS ORDERED that Respondent pay all recoverable costs in this matter in an amount to be determined, 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:

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

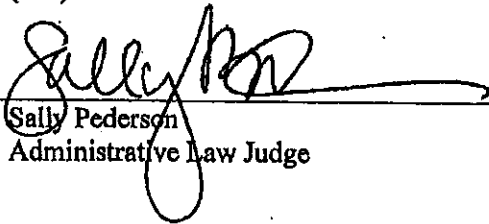
Respondent may also submit this information online via DSPS' Monitoring Case Management System at: <https://DSPSMonitoring.wi.gov>.

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

Dated at Madison, Wisconsin, on June 1, 2020.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____


Sally Pederson
Administrative Law Judge