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

In the Matter of the Disciplinary Proceedings
Against Christina A. Johnson, R.N., Respondent

FINAL DECISION AND ORDER

Order No. **ORDER 0006971**

Division of Legal Services and Compliance Case No. 18 NUR 589

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 10th day of September, 2020.

A handwritten signature in black ink, appearing to be 'K. J. Johnson', written over a horizontal line.

Member
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against Christina A. Johnson, R.N., Respondent

DHA Case No. SPS-20-0012
DLSC Case No. 18 NUR 589

PROPOSED DECISION AND ORDER

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

Christina A. Johnson, R.N.

████████████████████
Janesville, WI 53548

Christina A. Johnson, R.N.¹

████████████████████
Stoughton, WI 53589

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 John K. Lightfield
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 April 6, 2020, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Christina A. Johnson, R.N. (Respondent). The Complaint alleged that Respondent engaged in unprofessional conduct by violating the terms, provisions, or conditions of Board of Nursing Order 4646 issued against the Respondent on April 14, 2016, in violation of Wis. Admin. Code § N 7.03(1)(g), and by making an error in prescribing, dispensing, or administering medication, in violation of Wis. Admin. Code § N 7.03(8)(d).

¹ This reflects Respondent's most recent address on Wisconsin Circuit Court Automation Programs.

The Division served Respondent on April 6, 2020, by sending a copy of the Notice of Hearing and Complaint to Respondent's address on file with the Department, 1021 West Holmes Street, Janesville, WI 53548, via certified and regular first-class mail, pursuant to Wis. Admin. Code § SPS 2.08. Pursuant to Wis. Admin. Code § SPS 2.08(1), the complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the Respondent at the last known address of the Respondent. Service by mail is complete upon mailing. On April 13, 2020, the Notice of Hearing and the Complaint were returned to the Department marked as undeliverable by the United States Postal Service because Respondent had moved and left no forwarding address.

Respondent was required to file an Answer twenty (20) days from the date of service. No Answer was filed.

After the expiration of the 20-day time period to file an Answer, the undersigned Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for May 13, 2020. The ALJ sent notice of the conference by first-class mail to Respondent at both the last known address provided to the Department and a second address located at [REDACTED] Stoughton, WI. The notice ordered Respondent to contact the ALJ no later than May 12, 2020, to provide a telephone number at which she could be reached for the conference. The notice also stated that if Respondent failed to appear at the scheduled conference, default judgment may be entered against her.

Respondent failed to contact the ALJ by May 12, 2020 with a telephone number. At the prehearing conference on May 13, 2020, Respondent failed to appear. The Division provided the ALJ with Respondent's telephone number on file with the Department, but the ALJ was unable to reach anyone at that number. The Division moved for default based on Respondent's failure to file an Answer and failure to appear for the prehearing conference, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

On May 13, 2020, the ALJ granted the Division's motion and issued a Notice of Default and Order which required the Division to file and serve a recommended proposed decision and order by June 12, 2020. The Division timely filed its submission. The Notice of Default Order sent to the Respondent at the address located in Janesville, WI was returned as undeliverable. On July 2, 2020, the ALJ sent a second letter to the Respondent at the alternative address listed in Stoughton enclosing a copy of the Notice of Default and Order along with a copy of the Division's recommended proposed decision. The July 2, 2020 letter advised the Respondent that if the ALJ did not receive a response from the Respondent by July 13, 2020, the ALJ would assume that the Respondent was not contesting the disciplinary action. The Respondent did not contact the ALJ by July 13, 2020.

On July 20, 2020 the Respondent contacted the Division of Hearings and Appeals and left a voicemail that acknowledged receipt of the documents forwarded to her, expressed her confusion but which did not articulate any defenses or objections to the documents. The ALJ left a return voicemail to the Respondent on July 21, 2020 that advised her to respond in writing if she had any objections to the documents. However, to date and despite repeated opportunities and notices, the respondent has never answered the Division's Complaint and has failed to respond in writing to either the Notice of Default or the recommended proposed decision.

FINDINGS OF FACT

Facts from the Complaint Related to the Alleged Violations

1. Respondent Christina A. Johnson, R.N., (DOB XX/XX/1976) is licensed in the state of Wisconsin as a registered nurse, having license number 170910-30, first issued on February 23, 2010, and expired on February 29, 2020. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew upon payment of a fee until February 28, 2025.

2. Respondent's most recent address on file with the Department is [REDACTED] Janesville, Wisconsin 53548.

Order 4646

3. On April 14, 2016, Respondent's Wisconsin registered nursing license was limited for diversion of controlled substances in Division case number 15 NUR 585, pursuant to Board of Nursing (Board) Order 4646. These limitations required, among others, that Respondent enroll in a pre-approved drug monitoring program, practice in only pre-approved settings, provide employers with a copy of Order 4646, and not practice in settings where Respondent had access to controlled substances.

4. On October 7, 2016, the Board suspended Respondent's license for failure to participate in an approved drug monitoring program.

5. On January 24, 2018, the Board terminated Respondent's license suspension, allowing respondent to practice subject to the limitations in Order 4646.

6. Between January 24, 2018, and September 26, 2018, Respondent failed to participate in an approved drug monitoring program as prescribed by Order 4646.

7. On September 26, 2018, as a result of Respondent's failure to participate in an approved drug monitoring program, the Board suspended Respondent's license.

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8. On July 9, 2018, Respondent accepted employment at a nursing home facility (Facility), located in Beloit, Wisconsin.

9. On August 30, 2018, Respondent:

- a. removed medications for administration to Resident A, who was not at the Facility at that time.
- b. reported administering hydrocodone to Resident B.

10. Pursuant to Wis. Stat. § 961.16(2)(a)7., hydrocodone is a Schedule II controlled substance.

11. Respondent did not provide Facility with a copy of Order 4646, as required by Order 4646, nor did Respondent obtain pre-approval of employment at Facility as required by

Order 4646. Respondent also administered hydrocodone, in violation of Order 4646's restriction on Respondent's access to controlled substances.

Facts Related to Default

12. On April 6, 2020, the Notice of Hearing and Complaint were served on Respondent 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."

13. On April 13, 2020, the Notice of Hearing and the Complaint were returned to the Department as undeliverable to Respondent's address on file with the Department. The Post Office's sticker indicated they were unable to deliver because the Respondent moved and left no forwarding address.

14. Respondent failed to file an Answer to the Complaint.

15. After the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for May 13, 2020. The ALJ sent notice of the conference by U.S. mail to Respondent. The notice ordered Respondent to contact the ALJ no later than May 12, 2020, to provide a telephone number at which they could be reached for the conference. The notice also stated that if Respondent failed to appear at the scheduled conference, default judgment may be entered against her.

16. Respondent failed to contact the ALJ by May 12, 2020, with a telephone number at which they could be reached for the prehearing conference.

17. At the prehearing conference on May 13, 2020, Respondent failed to appear. The Division provided the ALJ with Respondent's telephone number on file with the Department but the ALJ was unable to reach anyone at the number provided. The Division moved for default based on Respondent's failure to file an Answer and failure to appear for the prehearing conference, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

18. On May 13, 2020, the ALJ granted the Division's motion and issued a Notice of Default and Order, ordering that the Division file and serve a recommended proposed decision and order by June 12, 2020, which the Division timely filed.

19. After mail to the Respondent's address in Janesville was returned as undeliverable, on July 2, 2020 the ALJ wrote to the Respondent at an address in Stoughton and gave her an additional opportunity to respond by July 13, 2020 to the Notice of Default and Order and the Division's recommended proposed decision.

20. The Respondent did not respond to ALJ's July 2, 2020 correspondence or the May 13, 2020 Notice of Default and Order or the Division's recommended proposed decision.

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

As stated in the May 13, 2020, Notice of Default and Order, Respondent is in default for failing to file an Answer and for failing to appear at the prehearing conference on May 13, 2020. *See* Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code HA 1.07(3)(c). 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

Following an investigation and disciplinary hearing, if the Board determines that a nurse has committed unprofessional conduct under Wis. Stat. §§ 441.07(1g)(b) and (d), it may “revoke, limit, suspend or deny a renewal of a license of a registered nurse. . . .” Wis. Stat. § 441.07(1g). The undisputed facts in this matter demonstrate the following:

Pursuant to Wis. Admin. Code § N 7.03(1)(g) the Respondent violated a term, provision, and/or condition of Board Order 4646 issued on April 14, 2016. The Order included conditions that the Respondent enroll and participate in a pre-approved drug monitoring program, only practice in pre-approved settings, provide employers with a copy of Order 4646, and not practice in settings where Respondent has access to controlled substances.

On October 7, 2016, the Board suspended Respondent’s license for failing to participate in an approved drug monitoring program in violation of Order 4646. On September 26, 2018, the Board again suspended Respondent’s license for failing to participate in an approved drug monitoring program between January 24, 2018, and September 26, 2018.

On July 9, 2018, Respondent accepted employment with a nursing home facility located in Beloit, Wisconsin. Respondent failed to obtain pre-approval to accept the employment as required by Order 4646 and Respondent failed to provide the nursing home facility with a copy of Order 4646. Further, the Respondent administered hydrocodone in violation of Order 4646’s restriction on access to controlled substances. (Pursuant to Wis. Stat. § 961.16(2)(a)7., hydrocodone is a schedule II controlled substance).

Respondent violated Wis. Admin. Code § N 7.03(8)(d) by making an error in prescribing, dispensing, or administering medication. Specifically, on August 30, 2018, Respondent, while employed at a nursing home facility, made an error by dispensing and documenting the administration of a medication to Resident A while Resident A was not present at the facility.

By violating these rules of professional conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (d).

Discipline

The three purposes of discipline in a professional misconduct case 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, 209, 237 N.W.2d 689 (1976). The Division recommends that the license of Respondent be revoked pursuant to the terms and conditions of the Order section below. Given that the Respondent has made no argument to the contrary and because the recommended discipline is consistent with the purposes articulated in *Aldrich* and case law, I adopt the Division's recommendation.

The recommended discipline is consistent with the purposes articulated in *Aldrich*, including rehabilitation. Despite having been given an opportunity for rehabilitation through the prior Order 4646, Respondent has repeatedly failed to comply with that Order, demonstrating that she is not capable or willing to be rehabilitated at this time.

"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. *Strigenz 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 discipline up to and including 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, Respondent was subject to an Order requiring significant limitations, designed in part to protect the public by ensuring that Respondent was monitored and participating in a treatment program. However, Respondent has failed to comply with that Order on multiple occasions, demonstrating that the prior Order is not sufficient to protect the public in this case.

Revocation of Respondent's license in Wisconsin and limitations on her ability to renew her Wisconsin license are necessary to protect the public from other instances of misconduct. Respondent's alleged misconduct was serious. The conduct that led to Order 4646 demonstrated that Respondent was not safe or competent to practice nursing. Furthermore, her subsequent conduct of practicing beyond the scope of her limited license and without the oversight required by Order 4646 shows a disregard for the public's trust and of the law. Imposing anything less than revocation would not aid in deterrence but may instead imply that such conduct is tolerable. Accordingly, revocation remains the only appropriate way in this matter in which to safeguard the public.

Moreover, revocation of Respondent's license in this case is necessary to deter other licensees from engaging in similar conduct. Respondent has demonstrated a lack of respect for the Board's authority as well as a wanton disregard of the law and public welfare. Therefore, revocation is an appropriate response to her disrespect for the law, the public welfare, and the licensing authority governing her profession.

The recommended discipline is consistent with Board precedent. See *In the Matter of Disciplinary Proceedings Against Timothy Bernard Murphy, R.N.*, Order Number LS0804035NUR (April 3, 2008) (nurse had license limited for diversion of narcotics, was convicted of two counts of felony possession of narcotics, continued to work in a medication passing facility despite prohibition, and had license revoked).² *In the Matter of Disciplinary*

² This decision is available online at: <https://online.drl.wi.gov/decisions/2008/ls0804035nur-00077624.pdf>

Proceedings Against Kristie L. Rynders, R.N., Order Number LS0709202NUR (September 4, 2008) (nurse was suspected of controlled substance diversion, had a positive urine drug screen for controlled substances without a prescription, did not cooperate with investigation or formal proceeding, and had license revoked).³ *In the Matter of Disciplinary Proceedings Against Diane Zakopyko, R.N.*, Order Number 0002470 (June 12, 2013) (Board revoked license of nurse who diverted controlled substances intended for patient use and who was in default for failure to file an Answer to the Complaint or participate in disciplinary proceedings).⁴

Based upon the facts of this case and the factors set forth in *Aldrich*, revocation of Respondent's license in Wisconsin is warranted as set forth in the Order section below.

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 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, funded by other licensees; 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 of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

When considering the above factors, it is appropriate in this matter for Respondent to pay the full costs of the investigation and of these proceedings. Respondent defaulted, and the factual allegations, identified in this decision, were deemed admitted. Thus, the Division met its burden of proof. Respondent's conduct was serious. Respondent violated the terms and conditions of Order 4646 which limited Respondent's nursing license because Respondent had diverted controlled substances. Respondent's license was suspended twice for failing to participate in an approved drug monitoring program for months. In addition, the Respondent made an error in dispensing or administering medication while she was employed at a nursing home facility, and at which Respondent was not pre-approved to work. Respondent administered controlled substances, which was prohibited by Order 4646. Furthermore, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. It would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Therefore, 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. Finally, the Respondent has not brought forth any reasons why costs should not be imposed in this matter.

³ This decision is available online at: <https://online.drl.wi.gov/decisions/2008/ls0709202nur-00077135.pdf>

⁴ This decision is available online at: <https://online.drl.wi.gov/decisions/2013/ORDER0002470-00008559.pdf>

ORDER

For the reasons set forth above, IT IS ORDERED that the license of Respondent Christina A. Johnson R.N., license number 170910-30, is REVOKED. Respondent may not petition for reinstatement of her registered nursing license pursuant to Wis. Stat. § 441.07(2), earlier than one (1) year from the date of revocation.

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 below:

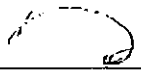
Department Monitor
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DSPSMonitoring@wisconsin.gov

You may also submit this information online via DSPTS' Monitoring Case Management System, here: <https://dspsmonitoring.wi.gov>.

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 August 13, 2020.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By:  _____
Kristin P. Fredrick
Administrative Law Judge