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Before the
State of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against Jill D. Raymer, R.N., Respondent

FINAL DECISION AND ORDER

Order No. **ORDER 0006972**

Division of Legal Services and Compliance Case No. 18 NUR 240

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.

Member
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against Jill D. Raymer, R.N., Respondent

DHA Case No. SPS-20-0011
DLSC Case No. 18 NUR 240

PROPOSED DECISION AND ORDER

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

Jill D. Raymer

Beloit, WI 53511

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 3, 2020, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal complaint against Respondent Jill D. Raymer, R.N. (Complaint). The Complaint alleged that Respondent engaged in unprofessional conduct by failing to cooperate in a timely manner, with the Board's investigation of a complaint filed against a license holder, in violation of Wis. Admin. Code § N 7.03(1)(c) and Wis. Stat. § 440.20(5)(a), and by failing to notify the Department of a change in their address within 30 days of the change, in violation of Wis. Stat. § 440.11(1).

The Division served Respondent on April 3, 2020, by sending a copy of the Notice of Hearing and Complaint to Respondent's address on file with the Department, Beloit, Wisconsin 53511, via certified and regular first-class mail, pursuant to Wis. Admin. Code § SPS 2.08. Pursuant to Wis. Admin. Code § SPS 2.08(1), a 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 May 4, 2020, the Notice of Hearing and the Complaint were returned to the Department marked as return to sender 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. 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.

FINDINGS OF FACT

Facts Related to the Alleged Violations

1. Respondent Jill D. Raymer, (DOB: XX/XX/1963) is licensed in the state of Wisconsin as a registered nurse, having license number 120064-30, first issued on July 7, 1995. This license expired on February 29, 2020, 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 28, 2025.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is _____, Beloit, Wisconsin 53511.

3. At all times relevant to this matter, Respondent worked as a registered nurse at a rehabilitation and skilled nursing facility (Facility) located in Beloit, Wisconsin.

4. On March 23, 2018, while working at the Facility, Respondent engaged in the following conduct:

- a. At approximately 9:00 p.m., Respondent provided Resident A with their nighttime medications in a medication cup. Resident A did not recognize two (2) pills in the cup and noticed that one (1) tablet of Norco 5-325 mg was not in the cup.

- b. Other nurses looked in Resident A's room but did not find the medication. Respondent then "found" the medication on the floor of Resident A's room. Resident A insisted on taking the pill and Respondent dropped it on the floor twice when handing it to Resident A. Both times, Respondent offered to retrieve a new pill for Resident A.

5. On March 26, 2018, Facility staff requested and Respondent agreed to submit to a urine drug screen. However, Respondent ultimately failed to submit to a urine drug screen and thus, the Facility considered Respondent's failure to submit to a urine drug screen as self-termination of employment.

6. On September 6, 2019, the Division sent a letter by first-class mail to Respondent's address on file with the Department.

7. On October 19, 2019, the Division sent, by certified mail, a subpoena requiring Respondent's appearance for an in-person interview on November 13, 2019. The subpoena was sent to Respondent's last known address on file and to an address associated with Respondent obtained from Wisconsin's Consolidated Court Automation Programs (CCAP). Both letters were returned to the Division as undeliverable.

8. On October 21, 2019, the Division attempted to contact Respondent via Respondent's only phone number, leaving a voice message, and email address on file with the Department.

9. The Respondent did not respond to any of the Division's contacts.

10. As of the date of this mailing, Respondent has not notified the Department of a change in address since February 24, 2014.

Facts Related to Default

11. On April 3, 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."

12. On May 4, 2020, the Notice of Hearing and the Complaint were returned to the Division as undeliverable to Respondent's address on file with the Department. The U.S. Post Office's sticker indicated they were unable to deliver because the Respondent moved and left no forwarding address.

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

14. 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 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.

15. Respondent failed to contact the ALJ with a telephone number at which they could be reached for the prehearing conference.

16. 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).

17. 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.

18. 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

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 held on May 13, 2020. *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

Following an investigation and disciplinary hearing, if the Wisconsin Board of Nursing (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:

On March 23, 2018, Respondent made an error in the administration of a controlled substance and refused to submit to a urine drug screen on March 26, 2018. Throughout 2018, 2019, and 2020, Respondent failed to respond to any contact attempts made by the Department and/or Division to the mailing address, email address, and phone number on file with the Department. Respondent has failed to cooperate with the Board's investigation of a complaint against her license, in violation of Wis. Admin. Code § N 7.03(1)(c) and Wis. Stat. § 440.20(5)(a), and failed to provide a current address to the Department, in violation of Wis. Stat. § 440.11(1).

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

Discipline

The same reasons justifying discipline in cases in which the respondent is currently credentialed apply to this case as Respondent may renew her license at any time. Even though Respondent's license is currently expired, it is appropriate and necessary to suspend and place limitations on the right to renew the credential. Wisconsin Stat. § 440.08(3)(a) allows the holder of a credential to restore the credential even after expiration by simply paying the application renewal fee and a late renewal penalty of \$25. Under subparagraph (b), the Department is empowered with the ability to promulgate rules requiring credential holders who have failed to renew the credential for five (5) years to complete additional requirements to restore their licenses. See Wis. Stat. § 440.08(3)(b). Read together, these provisions have been interpreted by the Department to mean that credential holders retain a right to automatically renew their credential within five (5) years of expiration by simply paying the required fees. Thus, Respondent has a right to renew her license until February 28, 2025.

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 right to renew the license of Respondent, be suspended and limited 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 appropriate and consistent with the purposes articulated in *Aldrich*. Promoting rehabilitation is one of the purposes of discipline; however, it is unknown if rehabilitation is possible or probable in this case, as there has been no information obtained during the investigation from Respondent due to her failure to respond to all attempts the Division has made to request information.

"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 their 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 suspension of the right to renew the license 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 this individual, who failed to cooperate with the Board, is competent in her profession. The Board cannot ensure that Respondent will practice nursing safely if she does not cooperate with the Board.

Suspension of, and limitations on, Respondent's right to renew her license to practice nursing are necessary to protect the public from other instances of misconduct. Respondent's

misconduct was serious. In this case, Respondent's alleged behavior involves the improper handling and possible attempted diversion of controlled substances. Respondent demonstrated a lack of respect for the Board's authority. Respondent's refusal to cooperate in the investigation of such serious allegations warrants the suspension of, and limitations on, Respondent's right to renew her license until Respondent satisfies the limitations in the proposed Order section below.

Moreover, suspension of the right to renew the license, and limitations placed on the right to renew, in this case are necessary to deter other licensees from refusing to cooperate with the Board as it relates to an investigation. Imposing anything less than a suspension and limitations would not aid in deterrence and could imply that such conduct by a nurse is tolerable. Licensees need to know this conduct will not be tolerated. Failure to impose the suspension and limitations requested below may encourage other licensees to not cooperate with the Board during an investigation as there would be little to no consequences to their actions. Accordingly, suspension of and limitations on Respondent's right to renew are necessary to deter other licensees from engaging in similar conduct.

The recommended discipline is consistent with Board precedent. *See In the Matter of Disciplinary Proceedings Against Tracy J. Burtis, R.N.*, Order 0005364 (July 13, 2017) (nurse refused to cooperate with the Board's investigation and, without reference to the underlying allegations, was reprimanded and had practice limitations placed on their license including working only under direct supervision, providing quarterly work reports, and reporting changes in employment to the Board);¹ *In the Matter of Disciplinary Proceedings against Nicole A. Devries, L.P.N.*, Order Number 0005429 (September 14, 2017) (Board accepted the surrender of nurse's right to renew an expired license following allegations of controlled substance diversion);² *In the Matter of Disciplinary Proceedings Against Rhonda L. Pace, L.P.N.*, Order Number 0006420 (July 9, 2019) (nurse who was disciplined in Minnesota for testing positive for controlled substances, suspected of diverting a controlled substance from their employer in Wisconsin, and did not respond to Department requests had license suspended by the Board and was allowed to petition for a stay of the suspension upon providing proof to the Board nurse was in compliance with conditions and limitations placed on nurse's license).³

In light of the facts of this case and the factors set forth in *Aldrich*, I find suspension of Respondent's right to renew her registered nursing license 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. The Board has also, in numerous previous orders, considered many factors when determining if all or part of the costs should be assessed against a Respondent. Factors have included: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the

¹ This decision is available online at: <https://online.drl.wi.gov/decisions/2017/ORDER0005364-00013889.pdf>

² This decision is available online at: <https://online.drl.wi.gov/decisions/2017/ORDER0005429-00014008.pdf>

³ This decision is available online at: <https://online.drl.wi.gov/decisions/2019/ORDER0006420-00015945.pdf>

level of discipline sought by the prosecutor; (4) the cooperation of the respondent; (5) any prior discipline; and (6) the fact that the Department is a program revenue agency, funded by other licensees. *See e.g. In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, LS 0802183 CHI (Aug. 14, 2008). It is within the Board's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

In this case, the Division has proven the counts alleged. The factual allegations were deemed admitted and there is no argument to indicate litigation was unnecessary. In addition, Respondent's actions are serious in nature and show a blatant disregard of the law and rules governing her nursing license. The Division is seeking the suspension of, and limitations on, the right to renew Respondent's professional nursing license in the state of Wisconsin. Moreover, Respondent has failed to cooperate with the Board's investigation and disciplinary process. Finally, it would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct.

Based on the foregoing, all of the costs of this proceeding should be assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS HEREBY ORDERED that Respondent's right to renew her registered nurse license (no. 120064-30) is SUSPENDED and LIMITED pursuant to the following limitations:

1. Respondent shall not submit an application for renewal of her nursing license until she undergoes, at her own expense, an alcohol and other drug abuse (AODA) assessment with an evaluator pre-approved by the Board or its designee who has experience conducting these assessments. Such assessment shall occur within six (6) months of the date in which Respondent submits her application for renewal of her nursing license.
 - a. Prior to the assessment, Respondent shall provide a copy of this Order to the evaluator. Respondent shall provide the Department Monitor with written acknowledgment from the evaluator that a copy of this Order has been received by the evaluator. Such acknowledgment shall be provided to the Department Monitor prior to the assessment.
 - b. Respondent shall provide and keep on file with the evaluator current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department to obtain a copy of the assessment. Copies of these releases shall immediately be filed with the Department Monitor.
 - c. Respondent shall identify and provide the evaluator with authorizations to communicate with all physicians, mental health professionals, and facilities at which Respondent has been treated or evaluated.

- d. The Board, or its designee, may impose additional limitations upon Respondent's right to renew and/or her nursing license based on the results of the assessment and/or the evaluator's recommendations.
- e. Respondent shall comply with the evaluator's recommendations.

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. 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
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

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

2. The terms of this Order are effective the date the Final Decision and Order is signed by the Board.

Dated at Madison, Wisconsin on July 23, 2020.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Telephone: (608) 266-7709
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By: _____



Kristin P. Fredrick
Administrative Law Judge