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Before the
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against Laurel J. Lynch, R.N., Respondent

FINAL DECISION AND ORDER

Order No. **ORDER 0006974**

Division of Legal Services and Compliance Case No. 17 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 .

Member
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against Laurel J. Lynch, R.N., Respondent

DHA Case No. SPS-20-0008
DLSC Case No. 17 NUR 589

PROPOSED DECISION AND ORDER

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

Laurel J. Lynch

Mountain Home, AR 72653

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 Lesley McKinney
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 March 20, 2020, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal complaint against Respondent Laurel J. Lynch, R.N., alleging that Respondent engaged in unprofessional conduct by failing to comply with the practice laws of the state in which the client was located at the time service was provided, in violation of Wis. Stat. § 441.51(3)(e); by having a nurse licensure compact privilege to practice revoked in another state, in violation of Wis. Admin. Code § N 7.03(1)(b); by failing to cooperate with the board's investigation against a license holder, in violation of Wis. Admin. Code § N 7.03(1)(c); by departing from the minimal standards of accepted nursing practice, in violation of Wis. Admin. Code § N 7.03(6)(c); 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 March 20, 2020, by sending a copy of the Notice of Hearing and Complaint to Respondent's address on file with the Department at Mountain Home, Arkansas 72653, via certified and First-Class mail. The documents were returned undeliverable. 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.

At the expiration of the 20-day time period to file an Answer, the Administrative Law Judge (ALJ) scheduled a telephone pre-hearing conference for Thursday, April 23, 2020, at 10:00 a.m. Notice of the pre-hearing conference was mailed to the Respondent by the ALJ on April 8, 2020 and instructed Respondent to provide the ALJ a telephone number at which she could be reached for the conference no later than April 21, 2020. Respondent failed to provide a telephone number. During the conference on April 23, 2020, the ALJ attempted all available telephone numbers for the Respondent without answer. At that time, the Division moved for default based on Respondent's failure to appear and failure to file an answer, pursuant to Wis. Admin. Code § SPS 2.14 and § HA 1.07(3).

On April 23, 2020, the ALJ issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order by May 14, 2020. On May 13, 2020, the Division requested an extension to file the proposed decision and order. The ALJ issued an order extending the deadline for filing and ordered the Division to file and serve the proposed decision and order to May 19, 2020. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1 – 15 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Laurel J. Lynch, R.N., (DOB XX/XX/1983) is licensed in the state of Wisconsin as a registered nurse, having license number 179304-30, first issued on July 20, 2011. This license expired on February 28, 2018 and has not been renewed. Per Wis. Stat. § 440.08(3), Respondent retains the right to renew upon payment of a fee until February 27, 2023.

2. Respondent's most recent address on file with the Department is
Mountain Home, Arkansas 72653.

3. At all times relevant to this proceeding, Respondent's only known employment was as a contracted travelling nurse working at a hospital (Hospital), located in Springfield, Missouri, pursuant to the privileges under the Enhanced Nurse Licensure Compact (Compact).¹

4. On August 3, 2017, the Hospital notified Respondent's contracting agency that she had been terminated based on questionable medication administration practices and suspected narcotic diversion.

5. The Missouri State Board of Nursing (Missouri Board) received evidence related to Respondent's termination from Hospital which indicated that Respondent diverted

¹ On April 2, 2018, Respondent indicated in communication with the Department that her primary residence was in Arkansas. Therefore, she was no longer able to work under the Compact using her Wisconsin license.

hydrocodone and oxycodone. Further, Respondent's for-cause drug test on August 2, 2017, tested positive for oxycodone and methadone absent a prescription for, or lawful reason to possess, either medication.

6. Respondent failed to cooperate with the Missouri Board's investigation into her misconduct.

7. On February 1, 2018, the Missouri Board issued a cease and desist order² which revoked Respondent's privilege to work as a registered nurse in Missouri under the Compact.

8. There is no evidence or indication that Respondent availed herself of any of the administrative remedies provided to contest the findings of the Missouri Board.

9. On February 1, 2019, a Department investigator conducted a phone interview with Respondent who disputed much of the evidence discussed in the cease and desist order. The investigator advised Respondent to provide records applicable to her denials and requested Respondent's current address.

10. Respondent refused to provide a current, valid address and stated that she would later contact the Department to update all her information.

11. Between February 15, 2019, and April 24, 2019, the Department investigator utilized the information on file at the Department and available via various public record sources to attempt contact with Respondent. No contact was made, and no response was received.

12. On April 28, 2019, Respondent emailed a purported current phone number to the Department investigator.

13. On April 29, 2019, and May 6, 2019, the Department investigator made several attempts to contact Respondent via phone and email. These attempts were unsuccessful.

14. On February 7, 2020, a Department attorney sent an email to Respondent's last known, valid email address requesting contact. There was no response.

15. On February 25, 2020, the Department attorney placed a phone call to Respondent's last known, valid phone number. The attorney left a voicemail requesting contact. The outgoing voicemail message was that of an unidentified female. The attorney followed up the voicemail with an email to Respondent. No response was received.

² Case Number 2017-005720

Facts Related to Default

16. On March 20, 2020, the Notice of Hearing and Complaint in this matter was 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."

17. Respondent failed to file an Answer as required by Wis. Admin Code § SPS 2.09(4).

18. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for April 23, 2020. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which she could be reached for the conference. The Notice instructed Respondent: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."

19. On April 23, 2020, the prehearing conference was held with the Division. The Respondent did not provide a phone number and did not appear. Respondent did not answer at additional phone numbers provided by the Department. Therefore, the ALJ granted the Division's motion for default.

20. On April 23, 2020, the ALJ issued a Notice of Default and Order which required the Division to file and serve, no later than May 14, 2020, a recommended proposed decision and order.

DISCUSSION AND CONCLUSIONS OF LAW

Jurisdictional Authority

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

Default

As stated in the April 23, 2020 Notice of Default and Order, Respondent is in default for failing to file an answer to the Complaint and failing to appear at the telephone conference held on April 23, 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 of Wisconsin Statute and Administrative Code

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). In addition, Wis. Stat. § 441.51(5)(a)7. permits the Board to take adverse action based upon the factual findings of a remote state’s disciplinary actions.

Respondent violated Wis. Stat. § 441.51(3)(e) and Wis. Admin. Code § N 7.03(1)(b), (1)(c), (6)(c), and (8)(e). The undisputed facts establish that on February 1, 2018, the Missouri Board issued a cease and desist order which revoked Respondent’s privilege to work as a registered nurse in Missouri under the Compact. The factual findings of the Missouri Board included diversion of hydrocodone and oxycodone with a positive urine drug screen for oxycodone and methadone. Despite sporadic contact with the Department, Respondent failed to provide or maintain valid contact information with which to cooperate with the Division’s investigation into this matter.

As a result of the above violations, 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).

While the Respondent’s license to practice nursing in Wisconsin expired on February 28, 2018, she retains the right to renew such license, upon payment of a fee, through February 27, 2023. As such, the Division requests that the right to renew the license of Respondent, Laurel J. Lynch, R.N., be revoked per Wis. Stat. § 441.07(1g)(b) and (d). 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*. Promoting rehabilitation is one of the purposes of discipline; however, it is unknown if rehabilitation is plausible in this case, as Respondent has a significant history of failure to cooperate with Board efforts.

“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 an individual who fails to cooperate with lawful investigations into conduct and diverts, obtains, and uses unlawful controlled substances is competent in her profession. The Board cannot ensure that Respondent will practice nursing safely.

Revocation of Respondent's right to renew her nursing license in Wisconsin is necessary to protect the public from other instances of misconduct. Respondent's alleged misconduct was serious. Ingesting controlled substances, for which she did not have a valid prescription, violates a fundamental duty with which all nurses are entrusted: the responsible handling of controlled substances that they have access to by virtue of their professional license. Contrary to this, Respondent disregarded the public's trust and disregarded her responsibilities to her patients. She also disregarded the law. Further, she refused to cooperate in either Board's lawful investigation of the allegations. Imposing anything less than revocation would not aid in deterrence but may instead wrongly encourage others to engage in similar conduct. Accordingly, revocation of Respondent's right to renew remains the only appropriate way in which to safeguard the public.

Moreover, revocation of Respondent's right to renew is necessary to deter other licensees from engaging in similar conduct. Licensees need to know this conduct will not be tolerated. Respondent has demonstrated a lack of respect for the Board's authority as well as a wanton disregard of Wisconsin law and requirements of the Compact. The Board cannot assure the public of Respondent's competency, and as such, Respondent is not fit to practice at this time. Therefore, revocation of Respondent's right to renew in Wisconsin is an appropriate response to her disrespect for the law, the public welfare, and the licensing authority governing her profession.

The recommended discipline is also consistent with Board precedent. In *In the Matter of Disciplinary Proceedings Against Kathleen M. Turner, L.P.N.*, Order Number 0003277 (June 12, 2014), Turner was convicted of three counts of Theft-Movable Property (misdemeanors) in relation to fraudulently obtaining controlled substances. The ALJ found, via summary judgment proceedings, that based on such conduct, Turner had violated Wis. Stat. § 441.07(d) and Wis. Admin. Code § 7.04(1) and (2).³ The issue of discipline and costs was reserved for hearing. However, Turner did not appear for the telephone hearing nor did she provide a written submission. The ALJ revoked Turner's right to renew her nursing license, as such license had expired in 2011, but allowed for renewal through April 29, 2016. The ALJ opined that "Ms. Turner's sketchy participation in these proceedings suggests either that she may still have substance abuse issues or that she does not take these disciplinary proceedings against her license seriously, or both." The ALJ went on to find that the objectives articulated in *Aldrich* would best be served by revocation of Ms. Turner's right to renew her license.⁴

In *In the Matter of Disciplinary Proceedings Against Cynthia M. Trotter, R.N.*, Order Number LS0910021NUR (December 3, 2009)⁵, Trotter diverted controlled substances from her employer while working as a travel nurse in Texas. The Texas Board of Nursing revoked Trotter's Multi-State Licensure Compact Privilege via a default order due to Trotter's failure to respond. As a result of the discipline in Texas, Trotter's failure to provide Wisconsin's licensing authority a valid address, and failure to respond to Wisconsin's disciplinary proceedings, the Board revoked Trotter's license to practice nursing in the state of Wisconsin.

³ Statutes and Code in effect when violations committed.

⁴ Available at: <https://online.drl.wi.gov/decisions/2014/ORDER0003277-00009966.pdf>

⁵ Available at: <https://online.drl.wi.gov/decisions/2009/ls0910021nur-00077880.pdf>

In *In the Matter of Disciplinary Proceedings Against Armstrong, Cheryl K., L.P.N.*, Order Number ORDER0000766 (March 24, 2011)⁶, the Florida Board of Nursing suspended Armstrong's nursing license upon a finding that she had forged a prescription in order to obtain a controlled substance. Upon allegations of subsequent diversion of controlled substances in Wisconsin, notices sent to Armstrong at the address on file with the Department were marked as undeliverable and returned to sender. The Board revoked Armstrong's license to practice nursing in Wisconsin.

In *In the Matter of Disciplinary Proceedings Against Leia M. Luepnitz, L.P.N.*, Order Number ORDER0000769 (March 24, 2011)⁷, the Florida Board of Nursing suspended Armstrong's nursing license upon a finding that she had diverted controlled substances. Upon allegations of subsequent diversion of controlled substances in Wisconsin, Luepnitz failed to appear or respond to notices related to the proceedings. The Board revoked Luepnitz's license to practice nursing in Wisconsin.

In light of the facts of this case and the factors set forth in *Aldrich*, I find revocation of Respondent's right to renew her license to practice nursing in Wisconsin warranted.

Costs

Wisconsin Stat. § 440.22(2) reads in part:

In any disciplinary proceeding against a holder of a credential in which the department or examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder...

The above statute does not require any particular analysis when determining whether to assess all or part of the costs in a proceeding against the Respondent. The Division requests that Respondent be ordered to pay the full costs of this investigation and of these proceedings.

⁶ Available at: <https://online.dri.wi.gov/decisions/2011/ORDER0000766-00005856.pdf>

⁷ Available at: <https://online.dri.wi.gov/decisions/2011/ORDER0000769-00005859.pdf>

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 previous orders, 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.

First, the Division proved the counts it alleged. This is not a case where the Division wasted resources or incurred additional costs by alleging multiple counts and then failed to prove those counts. Second, Respondent's conduct that led to the discipline at hand resulted from her failure to respond to multiple requests for information from the Board during an investigation and, when contact was made, intentionally employing delaying tactics. Additionally, Respondent diverted controlled substances from patients for personal use. Such conduct is serious. Third, the level of discipline sought is significant. Revoking the right to renew, a necessary outcome, is directly proportional to Respondent's conduct. Fourth, Respondent repeatedly failed to cooperate with the disciplinary process by negligently and intentionally refusing to respond to contact efforts by the Division and this Tribunal. Such actions severely diminished the Board's ability to protect the public as its investigation and resolution was delayed due to Respondent's actions and inaction. Fifth, 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. Finally, Respondent has failed to present any argument as to why full costs should not be assessed.

Using *Noesen* as guidance, considering the Board's historical reasoning, and considering and applying that reasoning the above facts, full costs of this proceeding should be assessed against Respondent and the amount of costs should be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

IT IS HEREBY ORDERED:

1. The right to renew the registered nurse license of Laurel J. Lynch, R.N., (license number 179304-30) to practice nursing in the state of Wisconsin is REVOKED.

2. Pursuant to Wis. Stat. § 441.07(2), the Board, in its discretion, may reinstate a revoked license no earlier than one year following revocation, upon receipt of an application for reinstatement.

3. If Laurel J. Lynch, R.N., ever makes application to the Board for any license, whether to grant a license and whether to impose any limitations or restrictions on any license that may be granted shall be in the sole discretion of the Board.

IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18.

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

You may also submit this information online via DSPS' Monitoring Case Management System, here:

<https://dpsmonitoring.wi.gov>

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
FAX: (608) 264-9885

By: 

Kristin P. Fredrick
Administrative Law Judge