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Before the
State of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against Jessica A. Lunde, R.N., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0007216**

Division of Legal Services and Compliance Case No. 19 NUR 018

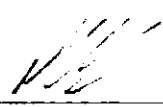
The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 11th day of February, 2021.



Member
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against Jessica A. Lunde, R.N., Respondent.

DHA Case No. SPS-20-0026
DLSC Case No. 19 NUR 018

PROPOSED DECISION AND ORDER

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

Jessica A. Lunde, R.N.
10962 Hanson Blvd. NW
Coon Rapids, MN 55433

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 Gretchen Mrozinski
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 September 23, 2020, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal complaint against Respondent Jessica A. Lunde, R.N., alleging that Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code §§ N 7.03(1)(b) and 7.03(5)(e) by having a license to practice nursing suspended in another state and, by committing fraud, deceit, or material omission in obtaining a license. Administrative Law Judge Kristin Fredrick (ALJ) was assigned to the matter.

The Notice of Hearing and the Complaint (Notice and Complaint) in this matter were served on Respondent by the Division on September 23, 2020, and again on October 7, 2020, after receiving a new address for Respondent from the U.S. Post Office. The Notice and Complaint were sent by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. An

Answer to a Complaint was to be filed within 20 days from the date of service of the Complaint. Wis. Admin. Code § SPS 2.09(4). No Answer has been filed.

Following expiration of the 20-day time period to file an Answer, the undersigned ALJ scheduled a telephone prehearing conference for Wednesday, November 11, 2020, at 11:30 am. Notice of this prehearing conference was sent to both parties, with instructions that the Respondent provide to the ALJ a telephone number at which Respondent could be reached for the telephone conference no later than November 10, 2020. Respondent failed to provide a telephone number.

At the prehearing conference held on Wednesday, November 11, 2020, the ALJ attempted to contact Respondent at two different telephone numbers provided by the Division. However, there was no answer at either number and the ALJ was unable to leave a voicemail for Respondent at either number. Therefore, the ALJ attempted to contact Respondent via her email and advised Respondent in writing that if she failed to reply by the end of business, the Division may move for default leading to discipline being imposed against her. When the Respondent failed to respond to the ALJ's email as instructed, the Division moved for default in writing. Respondent did not contact the ALJ via telephone or email and has not provided any good cause for her non-appearance and/or failure to answer in this matter.

Based upon Respondent's failure to file an Answer to the Complaint, failure to appear at the prehearing conference, and her failure to respond to the ALJ's written request for contact in this matter, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

On November 12, 2020, the ALJ issued a Notice of Default against Respondent and ordered that the Division file a recommended proposed decision and order by November 27, 2020. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-9 are taken from the Division's Complaint filed against Respondent in this matter.

1. Respondent is licensed in the state of Wisconsin to practice as a registered nurse, having license number 241078-30, first issued on April 20, 2018, and having expired on February 29, 2020.

2. Respondent retains the right to renew her Wisconsin registered nurse license through February 29, 2025, pursuant to Wis. Stat. § 440.08(3).

3. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 3954 121st Avenue, Coon Rapids, Minnesota 55433.

4. On September 23, 2004, Respondent was granted a license to practice professional nursing (registered nurse) in Minnesota.

5. On or about December 21, 2017, Respondent was terminated from her position as a registered nurse at a long-term care facility (Facility) located in Minnesota.

6. As early as February 8, 2018, the Minnesota Department of Health began investigating Respondent's conduct related to her termination as a registered nurse at the Facility.

7. On February 28, 2018, Respondent submitted her application for a Wisconsin registered nurse license. On her application, Respondent denied ever being terminated from any employment related to nursing and denied any disciplinary action was pending against her in another jurisdiction.

8. On October 4, 2018, the Minnesota Board of Nursing suspended Respondent's license to practice professional nursing as a result of Respondent's actions of diverting controlled substances from a long-term care facility and financial exploitation of a vulnerable adult.

9. Respondent's Minnesota license to practice professional nursing remains suspended as of the date of this Complaint.

Facts Related to Default

10. The Notice and Complaint were served on Respondent at her last known address on September 23, 2020, and again at Respondent's forwarding address on October 7, 2020, by both certified and first-class mail, pursuant to Wis. Admin. Code § SPS 2.08.

11. The Division also emailed a copy of the Notice of Hearing and Complaint to Respondent at her last known email address on September 23, 2020.

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

13. After the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for November 11, 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 November 10, 2020, to provide her current telephone number. The notice also stated that if Respondent failed to appear at the scheduled conference, default judgment may be entered against her.

14. Respondent failed to contact the ALJ by November 10, 2020, with her current telephone number.

15. At the prehearing conference on November 11, 2020, Respondent failed to appear. The Division provided the ALJ with Respondent's telephone number on file with the Department, as well as a second telephone number for Respondent contained in the Division's file. The ALJ attempted to contact Respondent at the two telephone numbers; however there was no answer and no ability to leave a voicemail at either number. The ALJ then attempted to contact Respondent via email and advised Respondent in writing that if she failed to reply by close of business on

November 12, 2020, the Division may move for default leading to discipline being imposed against her. Respondent failed to respond.

16. On November 12, 2020, the Division moved for default, pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

17. On November 12, 2020, the ALJ issued a Notice of Default and ordered that the Division file and serve a recommended proposed decision and order by November 27, 2020. According to the Notice, “[i]n light of Respondent’s failure to file an Answer to the Complaint, her failure to appear for the prehearing conference, and her failure to respond to the ALJ’s email advising that a default motion may be granted against her if she failed to reply, the ALJ finds Respondent to be in default.”

18. The Division timely filed its recommended proposed decision and order.

DISCUSSION

Jurisdictional Authority

The Wisconsin Board of Nursing (Board) has jurisdiction over this matter pursuant to Wis. Stat. § 441.07(1c). Wisconsin Stat. § 440.03(1) provides that the Department “may promulgate rules defining uniform procedures to be used by the department . . . and all examining boards and affiliated credentialing boards attached to the department or an examining board, for . . . conducting [disciplinary] hearings.” These rules are codified in Wis. Admin. Code ch. SPS 2. 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

The Division properly served the Notice and Complaint upon Respondent by mailing copies to her at her last known address. Service by mail is complete upon mailing. Wis. Admin. Code § SPS 2.08(1). Under Wis. Admin. Code § SPS 2.14, if a respondent “fails to answer as required by s. SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence.” *See also* Wis. Admin. Code § HA 1.07(3)(c).

Here, Respondent violated Wis. Admin. Code § SPS 2.09(4) by failing to file an Answer to the Complaint within 20 days from the date of service. Respondent also failed to appear at the prehearing telephone conference on November 11, 2020, failed to provide a current telephone number as ordered by the ALJ, and failed to respond to the ALJ’s email attempts following Respondent’s non-appearance at the prehearing. Therefore, Respondent is in default, and findings and an order may be entered on the basis of the Complaint.

Violations

The Board has the authority to impose discipline against the Respondent pursuant to Wis. Stat. § 441.07. Following an investigation, if the Board determines that a nurse has committed

“[o]ne or more violations of this subchapter or any rule adopted by the board under the authority of this subchapter,” or has committed “[m]isconduct or unprofessional conduct,” it may “revoke, limit, suspend or deny a renewal of a license of a registered nurse....” Wis. Stat. § 441.07(1g)(b) and (d), respectively.

Wisconsin Administrative Code § N 7.03 **Grounds for denying or taking disciplinary action.** The grounds for denying or taking disciplinary action on a license or certificate are any of the following:

- (1) Noncompliance with federal, jurisdictional, or reporting requirements including any of the following:

...

(b) Having a license to practice nursing or a nurse licensure compact privilege to practice denied, revoked, suspended, limited, or having the credential holder otherwise disciplined in another state, territory, or country. A certified copy of the record of the board is conclusive evidence of the final action.

- (5) Fraud, deception or misrepresentation, including any of the following:

...

(e) Fraud, deceit, or material omission in obtaining a license or certification or in the renewal of the license or certification.

Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code §§ N 7.03(1)(b) by having a license to practice nursing suspended in another state. Respondent was licensed to practice nursing in Minnesota. The Minnesota Board of Nursing suspended Respondent’s license to practice professional nursing as a result of Respondent’s actions of diverting controlled substances from a long-term care facility and financial exploitation of a vulnerable adult. The suspension occurred on October 4, 2018.

Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code § N 7.03(5)(e) by committing fraud, deceit and/or material omission when she applied for licensure as a nurse in Wisconsin on February 28, 2018. In her application for licensure as a Wisconsin registered nurse, Respondent affirmatively denied ever being terminated from any employment related to nursing and denied any disciplinary action was pending against her in another jurisdiction. Respondent’s assertions were false as she was terminated from her position as a registered nurse at a long-term care facility in Minnesota in December 2017. And, at the time Respondent applied for licensure in Wisconsin, she was under investigation by the Minnesota Department of Health which was investigating Respondent’s reasons for termination from the long-term care facility in Minnesota.

By engaging in conduct qualifying as grounds for taking disciplinary action on her license, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b), and (d), and Wis. Admin. Code § N 7.03.

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 seeks to revoke the Respondent's ability to renew her license. Based upon the facts set forth herein, I find that the recommended discipline is consistent with the purposes articulated in *Aldrich*. Although promoting rehabilitation is one of the purposes of discipline, the potential for rehabilitation is uncertain in this case due to the Respondent's failure to respond or participate in the proceedings. Had the Board known that Respondent was recently terminated from a health care facility and was under investigation in Minnesota, the Board may have decided to deny Respondent's application for licensure or limit her license to adequately address concerns of rehabilitation. Instead, Respondent prevented an opportunity to rehabilitate and denied the Division the ability to protect the public by falsifying her application for licensure in Wisconsin. Finally, having obtained no Answer from Respondent following the Notice and Complaint, and having failed to appear for the prehearing conference, the Board cannot determine whether any rehabilitative measures would be effective. Respondent's actions and/or inaction demonstrates a lack of respect for Board authority.¹

Moreover, Respondent's conduct in the Minnesota disciplinary matter was egregious and significantly endangered the public. "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 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 state 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). Revocation of Respondent's right to renew her license is necessary to protect the public from other instances of misconduct. Registered nurses are licensed to care for the sick and injured, a vulnerable population. The Minnesota Board disciplined Respondent because Respondent diverted controlled substances from a long-term care facility and financially exploited a vulnerable adult. Respondent falsified her application for licensure in Wisconsin. Such circumstances demonstrate that Respondent is not fit to be a registered nurse in Wisconsin.

Revocation is also necessary to deter other licensees from engaging in similar conduct. A suspension of one's license to practice nursing due to diversion of controlled substances and exploitation of a vulnerable adult, as well as falsifying an application for licensure is serious misconduct, which cannot be tolerated. Revocation of Respondent's right to renew will serve to deter others from committing similar violations. Revocation is an appropriate response to Respondent's disrespect for patient welfare, the law, and the licensing authority governing her profession.

¹ Should Respondent wish to return to nursing in Wisconsin following the revocation of her right to renew her license, Respondent may apply for reinstatement of her license via Wis. Admin. Code § N 2.41(3). The application for reinstatement will allow the Board to require evidence of rehabilitation or change in circumstances warranting reinstatement. See Wis. Admin. Code § N 2.41(3).

Even though Respondent's license is currently expired, it is appropriate and necessary to impose discipline. 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. The Department is empowered with the ability to promulgate rules requiring credential holders who have failed to renew the credential for five 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 credentials within five years of expiration by simply paying the required fees. Thus, Respondent has an automatic right to renew her license until February 29, 2025. The fact that Respondent retains a right to renew makes the reasoning for discipline against active licensees equally appropriate for expired licensees.

Finally, the discipline imposed is consistent with prior Board decisions. See *In the Matter of Disciplinary Proceedings Against Rochelle A. Current, R.N.*, Board Order No. 06238 (June 13, 2019) (Board revoked nurse's right to renew her license pursuant to the Nurse Licensure Compact for misdemeanor convictions, failure to report convictions to the Board, and discipline in Arkansas)²; *In the Matter of Disciplinary Proceedings Against Stephanie Y. Gaines, L.P.N.*, Board Order No. 04686 (April 29, 2016) (Board revoked nurse's right to renew her license and privilege to practice nursing pursuant to the Nurse Licensure Compact for failure to cooperate with Board's investigation after complaint that nurse took financial advantage of a patient and was convicted of forgery-uttering, unauthorized use of personal identifying information to obtain money, possession of narcotics and bail jumping)³; *In the Matter of Disciplinary Proceedings Against Kelly L. Kowalkowski, R.N.*, Board Order 04613 (March 18, 2016) (Board revoked nurse's right to renew her license and privilege to practice nursing pursuant to the Nurse Licensure Compact for failure to cooperate with an investigation by the Board after being charged with several drug-related offenses)⁴.

In light of the facts of this case, the factors set forth in *Aldrich*, and prior Board decisions, I find that the Division's recommended discipline revoking the Respondent's right to renew her license to practice registered nursing in Wisconsin is appropriate.

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;

² *In the Matter of Disciplinary Proceedings Against Rochelle A. Current, R.N.*, Board Order No. 06238

³ *In the Matter of Disciplinary Proceedings Against Stephanie Y. Gaines, L.P.N.*, Board Order No. 04686

⁴ *In the Matter of Disciplinary Proceedings Against Kelly L. Kowalkowski, R.N.* Board Order 04613

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.

Considering the above factors, it is appropriate for Respondent to pay the full costs of the investigation and prosecution of these proceedings. Respondent defaulted and the factual allegations identified in this decision were deemed admitted. Respondent displayed dangerous and harmful behavior while practicing nursing that put herself, her patients, and the public at risk. She committed fraud when applying for licensure in Wisconsin. Finally, Respondent failed to provide current contact information to the ALJ, failed to appear at the prehearing conference, and failed to file an Answer to the Complaint or otherwise provide any argument regarding the allegations brought against her license to practice nursing. As such, there exists no reason of record why Respondent should not bear assessment of full costs in this matter.

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.

ORDER

For the reasons set forth above, IT IS ORDERED that the right to renew the Wisconsin registered nurse license of Respondent, License No. 241078-30, is revoked.

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 Department Monitor at:

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 payment online via DSPS' Monitoring Case Management System at: <http://dpspsmonitoring.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.

DHA Case No. SPS-20-0026
DLSC Case No. 19 NUR 018
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Dated at Madison, Wisconsin, on this 5th day of January, 2021.

STATE OF WISCONSIN
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By: 

Kristin P. Fredrick
Administrative Law Judge