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

In the Matter of the Disciplinary Proceedings
Against Crystal A. Zimmerman, R.N., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 00075 14**

Division of Legal Services and Compliance Case Nos. 19 NUR 452 and 20 NUR 346

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 12 day of August, 2021.

A handwritten signature in black ink, consisting of several stylized, overlapping loops and a long horizontal stroke at the end.

Member
Board of Nursing



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
CRYSTAL A. ZIMMERMAN, R.N., Respondent

DHA Case No. SPS-21-0027
DLSC Case Nos. 19 NUR 452
and 20 NUR 346

PROPOSED DECISION AND ORDER

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

Crystal A. Zimmerman, R.N.
421 Otter Ave.
Oshkosh, WI 54901

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 Joost Kap
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

On April 21, 2021, the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint alleging that the Respondent Crystal A. Zimmerman, R.N., violated a law substantially related to the practice of nursing, engaged in repeated or significant disruptive behavior or interaction with health care personnel, left a nursing assignment without properly notifying appropriate supervisory personnel and ensuring the safety and welfare of the patient, and failed to cooperate in a timely manner with the Board's investigations, in violation of Wis. Admin. Code §§ 7.03(2), (4)(d), (6)(d), and (1)(c), respectively. Administrative Law Judge Andrea Brauer (ALJ) was assigned to the matter.

The Division served Respondent on April 21, 2021, by sending a copy of the Notice of Hearing and the Complaint to Respondent's address of record with the Department via certified and regular first-class mail consistent with Wis. Admin. Code § SPS 2.08. Respondent was

required to file an Answer to the Complaint within 20 days from the date of service of the Complaint. Wis. Admin. Code § SPS 2.09(4). No Answer has been filed by or on behalf of Respondent.

Following expiration of the 20-day period to file an Answer, the ALJ issued a Notice of Telephone Prehearing Conference, dated May 12, 2021 (Notice). The Notice set a prehearing conference for May 27, 2021, and directed Respondent to provide the ALJ with her current telephone number no later than May 26, 2021. The Notice also advised Respondent that failure to appear at the prehearing conference may result in default judgment being entered against her.

Respondent did not provide her current telephone number to the ALJ by May 26, 2021, as ordered, did not otherwise contact the ALJ or the Division's attorney, and did not appear at the prehearing conference. During the prehearing conference, the ALJ attempted to reach Respondent at approximately 10:05 a.m., 10:07 a.m., and 10:18 a.m. at her telephone number on file with the Department, but Respondent did not answer, and a message stated her voice mailbox had not been set up yet. Respondent has not contacted the ALJ or the Division's attorney since the prehearing conference.

Based on Respondent's failure to file an Answer to the Complaint and failure to appear at the May 27, 2021 prehearing conference, the Division moved for default pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

If a Respondent fails to file an Answer as required or fails to appear at the hearing at the time fixed therefor, the Respondent is in default. Wis. Admin. Code § SPS 2.14. *See also* Wis. Admin. Code § HA 1.07(3)(b). Wisconsin Admin. Code § HA 1.07(3)(c) delineates the circumstances which constitute a failure to appear:

For a telephone or video hearing or prehearing, the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: (1) The failure to provide a telephone number to the division after it had been requested; (2) the failure to answer the telephone or videoconference line; (3) the failure to free the line for the proceeding; (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

Wisconsin Admin. Code § SPS 2.14 provides that when a Respondent is in default, "the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence." *See also* Wis. Admin. Code § HA 1.07(3)(b) ("If a respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate. . .")

In light of Respondent's failure to file an Answer to the Complaint and failure to appear for the May 27, 2021 prehearing conference, the ALJ found Respondent to be in default, issued a Notice of Default and Order on May 28, 2021, and ordered that the Division file a recommended proposed decision and order by June 10, 2021. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-18 are taken from the Division's Complaint filed against Respondent in these matters and are deemed admitted because Respondent is in default.

1. Crystal A. Zimmerman, R.N. (Respondent) (DOB: February 24, 1986) is licensed in the state of Wisconsin as a registered nurse, having license number 197809-30, first issued on September 23, 2013, and current through February 28, 2022.

2. The most recent mailing address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is 421 Otter Avenue, Oshkosh, Wisconsin 54901. The most recent email address and phone number on file with the Department for Respondent are krystalez24@gmail.com and (920) 379-9796.

Division Case Number 19 NUR 452

3. On July 26, 2019, the Department received a complaint alleging that Respondent threatened to report a certified nursing assistant to the Wisconsin Board of Nursing (Board) for quitting her job on short notice.

4. On August 29 and September 17, 2019, the Department sent requests to Respondent at her mailing and email addresses of record with the Department, requesting her response to the allegations, but no response was provided.

5. On January 14, 2020, the Department sent a letter to Respondent at her mailing address of record with the Department, requesting her response to the allegations, but no response was provided.

6. On January 31, 2021, Respondent renewed her registered nursing license and did not update her mailing address, email, or telephone number of record with the Department.

7. On February 6, 2020, the Department sent a letter to Respondent at her mailing address of record with the Department, requesting her response to the allegations, but no response was provided.

8. On March 12, 2020, the Department sent a letter via Certified Mail to Respondent at her mailing address of record with the Department, requesting her response to the allegations, but no response was provided, and the Certified Mail receipt was returned as "undeliverable."

9. On October 9, 2020, the Department attempted to call Respondent at her phone number of record with the Department, but Respondent did not answer and her voicemail would not accept a message or call-back number.

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10. At all times relevant hereto, Respondent was working as a registered nurse at a nursing home facility in Milwaukee, Wisconsin (Facility).

11. On July 7, 2020, Respondent punched in to work at the Facility and was told she would be working on a different unit than originally scheduled.

12. Respondent became upset about the change and raised her voice, used a profanity, and left the Facility without properly notifying a supervisor or ensuring coverage for the patients she was scheduled to care for.

13. The Facility was eventually able to find another nurse to cover Respondent's shift, but patient cares and the medication pass were delayed by approximately 90 minutes.

14. On July 10, 2020, and July 20, 2020, the Department sent requests to Respondent at her email address of record with the Department, requesting her response to the allegations, but no response was provided.

15. On July 28, 2020, the Department sent a letter to Respondent at her mailing address of record with the Department, requesting her response to the allegations, but no response was provided.

16. On October 5, 2020, the Department sent a letter to Respondent at her mailing address of record with the Department, requesting her response to the allegations, but no response was provided.

17. On October 9, 2020, the Department attempted to call Respondent at her phone number of record with the Department, but Respondent did not answer and her voicemail would not accept a message or call-back number.

18. Respondent has not responded to the allegations and has not otherwise responded to the Department's requests.

Facts Related to Default

19. On April 21, 2021, the Notice of Hearing and Complaint were served on Respondent at her address of record with the Department by certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08.

20. Respondent was required to file an Answer to the Complaint within 20 days from the date of service pursuant to Wis. Admin. Code § SPS 2.09(4). No Answer was filed.

21. Following expiration of the 20-day time period to file an Answer, the ALJ set a prehearing conference for May 27, 2021, at 10:00 a.m. and directed Respondent to provide a telephone number to the ALJ no later than May 26, 2021. Respondent did not provide a

telephone number or otherwise contact the ALJ or the Division's attorney and did not appear at the prehearing conference.

22. At the prehearing conference on May 27, 2021, the ALJ attempted to reach Respondent via telephone at approximately 10:05 a.m., 10:07 a.m., and 10:18 a.m. Respondent did not answer, and a message stated that her voice mailbox had not been set up yet. Respondent has not contacted the ALJ or the Division's attorney since the prehearing conference.

23. Based on Respondent's failure to file an Answer to the Complaint and failure to appear at the May 27, 2021 prehearing conference, the Division moved for default pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

24. The ALJ granted the Division's motion and found Respondent in default.

25. On May 28, 2021, the ALJ issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order by June 10, 2021.

26. 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) and (1g). 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 of Hearing and Complaint upon Respondent by mailing copies to her address of record with the Department. 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).

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 May 27, 2021. Therefore, Respondent is in default, and findings and an order may be entered based on the Complaint.

Burden of Proof

The burden of proof in disciplinary proceedings before the Board is a preponderance of the evidence. Wis. Stat. § 440.20(3). Given Respondent's failure to answer the allegations in the Complaint and subsequent default, the facts alleged in the Complaint are deemed admitted.

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). Based on the facts above, Respondent has committed the following violations.

First, Respondent failed to cooperate in a timely manner with the Board's investigations within the meaning of Wis. Admin. Code § N 7.03(1)(c). On multiple occasions in both matters pled in the Complaint, the Division, on behalf of the Board, sent requests for a response to Respondent at her mailing, email, and telephone contacts of record with the Department. However, Respondent failed to respond to any of them.

Second, Respondent violated Wis. Admin Code § N 7.03(2) by violating a law which is substantially related to the practice of nursing. Specifically, Respondent violated Wis. Stat. § 440.11(1), which requires licensees who move from the last address provided to the Department to notify the Department in writing of the new address within 30 days of the change. The fact that the Division's March 12, 2020 letter to Respondent was returned as undeliverable, combined with the fact that Respondent did not respond to any of the Division's other letters, is sufficient to establish by a preponderance of the evidence that she has moved from her mailing address of record.

Third, Respondent violated Wis. Admin Code § N 7.03(4)(d) by engaging in repeated or significant disruptive behavior or interaction with health care personnel, patients, family members, or others that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered. The Division's Complaint details a circumstance in which Respondent became angry and disruptive and left her work without properly notifying a supervisor or ensuring patient coverage because she was upset that she would be working on a different unit than originally scheduled. The alleged behavior was significant and disruptive, and it resulted in an estimated 90-minute delay in patient care. It is also reasonable to expect that the delay could have adversely affected quality of care.

Finally, as described above, Respondent also violated Wis. Admin Code § N 7.03(6)(d) by failing to report to or leaving a nursing assignment without properly notifying appropriate supervisory personnel and ensuring the safety and welfare of the patient or client.

As a result of the admitted conduct and violations, 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 recommends that Respondent be reprimanded and that her license be suspended until she completes six hours of education on the topic of Professionalism and provides a written statement explaining her failure to cooperate with the Board's investigations. The Division also proposes that the Board be authorized to impose additional limitations based on Respondent's written statement.

The Division's recommended discipline is hereby adopted, except that I do not find it appropriate to grant the Board discretion to impose any type of additional future limitations based on Respondent's written statement. The case law is clear that discipline must be responsive to the licensee's specific misconduct and warranted under the facts of the case. I therefore recommend that the order specify that the Board is authorized to limit Respondent's license only to the extent that the limitations are consistent with the purposes articulated in *Aldrich*. Any such limitation must be tailored to specifically address Respondent's misconduct.

The remainder of the Division's recommended discipline is consistent with the purposes articulated in *Aldrich*. The Board cannot determine whether any rehabilitative measures would be effective in this case because Respondent has not participated in the Board's investigations of these matters. Respondent's repeated and ongoing failure to cooperate demonstrates a lack of respect for the Board's authority.

By failing to cooperate with the Board's investigations, Respondent potentially put public safety at risk because the Board cannot determine whether her conduct persists. "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 suspension is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984).

The suspension of Respondent's license is necessary to ensure that Respondent is practicing safely and will in the future cooperate with the Board that issued and regulates her license. Registered nurses are licensed to care for the sick and injured, a vulnerable population. Respondent failed to meet the minimum standards of her profession.

Meaningful discipline is necessary to deter other licensees from engaging in similar conduct. Failure to meet the minimum standard expected in the nursing profession and failing to cooperate with the Board constitutes serious misconduct. Reprimanding Respondent and suspending her license will serve to deter others from committing similar violations.

Finally, case precedent supports a suspension for failing to cooperate with a licensing board. *See In the Matter of Disciplinary Proceedings Against Manuel J. Thomas, M.D.*, Order Number 0007046 (October 21, 2020) (Medical Examining Board suspended Respondent's license indefinitely for failing to cooperate with investigation and proceedings);¹ *See In the Matter of Disciplinary Proceedings Against Michael N. Mangold, M.D.*, Order Number 0002433 (May 15, 2013) (Medical Examining Board suspended Respondent's license indefinitely or until a showing that Respondent recognized the authority of the Board and understood his obligations to comply with the Board's orders for practicing medicine without a valid license);² and, *In the Matter of Disciplinary Proceedings Against Ossama Abdellatif, M.D.*, Order Number LS0904201MED (September 16, 2009) (Medical Examining Board suspended Respondent's license indefinitely for failing to cooperate with the Board's investigation and practicing medicine under another name).³

Considering the facts of these matters, the factors set forth in *Aldrich*, and case precedent, it is appropriate to reprimand Respondent and indefinitely suspend her license under the terms of the Order below.

Costs

The Board is vested with discretion concerning whether to assess all or part of the costs of these matters 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.

Considering the above factors, it is appropriate for Respondent to pay the full costs of the Division's cases and these proceedings. Respondent defaulted and the facts alleged in the Complaint were deemed admitted. Respondent put patients at risk when she left her nursing

¹ *In the Matter of Disciplinary Proceedings Against Manuel J. Thomas, M.D.*, Order Number 0007046

² *In the Matter of Disciplinary Proceedings Against Michael N. Mangold, M.D.*, Order Number 0002433

³ *In the Matter of Disciplinary Proceedings Against Ossama Abdellatif, M.D.*, Order Number LS0904201MED

assignment without properly notifying appropriate supervisory personnel and failed entirely to cooperate with the Board's investigations. Finally, Respondent failed to answer the Division's Complaint, failed to provide the ALJ with a telephone number, and failed to appear at the prehearing conference.

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 these matters on those licensees who have not engaged in misconduct. Therefore, it is appropriate for Respondent to pay the full costs of the investigations and this proceeding, as determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that Respondent (license No. 197809-30) is REPRIMANDED.

IT IS FURTHER ORDERED that Respondent's license to practice as a registered nurse in the state of Wisconsin (license No. 197809-30) is SUSPENDED indefinitely.

IT IS FURTHER ORDERED that Respondent may petition to lift the suspension of her license under the following conditions:

- a. Respondent shall at her own expense, successfully complete six hours of education on the topic of Professionalism offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the course(s).
- b. Respondent shall submit proof of successful completion of the education in the form of verification from the institution providing the education to the Department Monitor at the address stated below.
- c. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department and may not be used in future attempts to upgrade a credential in Wisconsin.
- d. At the time of the petition, Respondent must provide the Board with a written statement explaining her failure to cooperate with the Board's two investigations. The Board, or its designee, may impose additional limitations upon Respondent's license based on the written statement provided by Respondent. Any such limitation must serve the following purposes: promoting Respondent's rehabilitation, protecting the public from other instances of misconduct, and/or deterring other credential holders from engaging in similar conduct.
- e. Request for approval of courses, proof of successful course completion, petitions, and any other information required by this Order shall be submitted to the Department Monitor at the address below.

IT IS FURTHER ORDERED that Respondent pay all recoverable costs 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) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.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 Milwaukee, Wisconsin, on July 19, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: Andrea Brauer
Andrea Brauer, Administrative Law Judge