

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before the
State of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against Amanda Nabbefeldt, R.N. Respondent

FINAL DECISION AND ORDER

Order No. **ORDER 0007516**

Division of Legal Services and Compliance Case No. 20 NUR 254

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.

Member
Board of Nursing



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings
Against Amanda Nabbefeldt, R.N., Respondent

DHA Case No. SPS-21-0020
DLSC Case No. 20 NUR 254

PROPOSED DECISION AND ORDER

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

Amanda Nabbefeldt, R.N.
9095 Wagonwheel Drive
Nekoosa, WI 54457

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 Notice of Hearing and the Complaint in this matter were served on Amanda Nabbefeldt, R.N. (Respondent), by the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), on March 19, 2021, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. An answer to a complaint must be filed within 20 days from the date of service of the complaint. Wis. Admin. Code § SPS 2.09(4). No answer was filed.

Following the expiration of the 20-day period to file an answer, Administrative Law Judge (ALJ) Angela Chaput Foy scheduled a telephone prehearing conference for April 29, 2021, at 10:00 a.m. Notice of this prehearing conference was sent to both parties. Attorney Gretchen Mrozinski appeared on behalf of the Division. The Respondent did not appear.

Based on the Respondent's failure to file an answer to the complaint and failure to appear for the prehearing conference 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 April 30, 2021, the ALJ issued a Notice of Default against the Respondent and ordered that the Division file a recommended proposed decision and order no later than June 1, 2021. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations from the Division's Complaint

1. The Respondent, Amanda Nabbefeldt, R.N., (DOB: October 4, 1983) is licensed in the state of Wisconsin to practice registered nursing, having license number 229472-30, first issued on June 16, 2016, and current through February 28, 2022.

2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for the Respondent is 9095 Wagonwheel Drive, Nekoosa, Wisconsin 54457.

3. At all times relevant to this proceeding, the Respondent worked as a registered nurse at a facility located in Wisconsin Rapids, Wisconsin (Facility).

4. On May 13, 2020, the Facility discovered that Patient A's modafinil card was missing during the A.M. shift change. An investigation began, but the medication was not found.

5. When interviewed by the Facility, the Respondent was unable to recall counting the modafinil medication on May 12, 2020.

6. Nurse A recalled counting the modafinil medication with the Respondent during shift change on May 12, 2020, and seeing the modafinil card at issue. Nurse A agreed to a drug test which returned negative results.

7. The modafinil card went missing sometime between the time the Respondent took custody of the modafinil medication at shift change on May 12, 2020, to the time that the A.M. nurse reported for duty on May 13, 2020.

8. The Respondent was the last licensed nurse to take custody of the modafinil card before it was reported missing.

9. On or about May 14, 2020, the Respondent was suspended pending the investigation. Thereafter, the Facility attempted to telephone the Respondent as part of its investigation.

10. The Respondent declined to submit to a drug test with the Facility and did not return any phone calls from the Facility after May 14, 2020.

11. The Respondent was terminated from the Facility on June 10, 2020.

12. On October 9, 2020, a Division Investigator emailed the Respondent requesting a response to the allegations of this case with a deadline of October 23, 2020. The Division did not receive a response.

13. On February 17, 2021, a Division investigator sent a subpoena to the Respondent via email and U.S. mail to the Respondent's address on record with the Department requiring her appearance for a telephone interview with a Division attorney on February 25, 2021, at 10:00 a.m. The telephone interview was scheduled via a conference line with the conference line number provided to the Respondent in the subpoena cover letter and subpoena.

14. On February 25, 2021, a Division investigator and attorney appeared for the telephone interview with the Respondent. They remained on the phone for ten minutes and called out to the Respondent several times, but the Respondent was not present for the call. The Division attorney then called the Respondent's telephone number on record with the Department, encountered no answer, received a voicemail greeting, and left a voicemail message for the Respondent.

15. The Respondent did not return the voicemail message left for her on February 25, 2021, by the Division attorney.

Facts Related to Default

16. The Notice and Complaint were served on the Respondent at her address on record with the Department on March 19, 2021, by both certified and regular mail.

17. The Respondent failed to file an answer to the complaint. After the expiration of the 20-day period to file an answer, the ALJ scheduled a telephone prehearing conference for April 29, 2021. Notice of this prehearing conference was sent to both parties, with instructions that the Respondent contact the ALJ with a telephone number at which the Respondent could be reached for the conference no later than April 28, 2021. The Respondent did not contact the ALJ. At the prehearing conference held on April 29, 2021, Attorney Gretchen Mrozinski appeared on behalf of the Division. The ALJ attempted to reach the Respondent at a telephone number that was on file for the Respondent with the Department. The ALJ called the Respondent at approximately 10:03 a.m., and 10:20 a.m. and left a voicemail message each time. The ALJ also emailed the Respondent at the email address on file with the Department at 10:06 a.m. No response email or phone call was received. As of April 30, 2021, the Respondent has not contacted the ALJ at the telephone number or email address provided by the ALJ.

18. The Division moved for default based on the Respondent's failure to answer the complaint, as well as the Respondent's failure to appear for the prehearing conference pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

19. On April 30, 2021, the ALJ issued a Notice of Default and ordered that the Division file and serve a recommended proposed decision and order no later than June 1, 2021.

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

DISCUSSION

Jurisdictional Authority

The Wisconsin Board of Nursing (Board) has jurisdiction over this matter. Wis. Stat. § 441.07(1c). 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.” Wis. Stat. § 440.03(1). These rules are codified in SPS Chapter 2 of the Wisconsin Administrative Code. The undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1). Wis. Admin. Code § SPS 2.10(2),

Default

The Division properly served the Respondent with the Notice and Complaint by mailing a copy to her address on record with the Department. Service is complete upon mailing. Wis. Admin. Code § SPS 2.08(1). 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.” Wis. Admin. Code § SPS 2.14; *See also* Wis. Admin. Code § HA 1.07(3)(c).

Here, the 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. The Respondent also failed to appear at the prehearing telephone conference on April 29, 2021. Therefore, the Respondent is in default, and findings and an order may be entered based on the complaint.

The burden of proof in disciplinary proceedings before the Board is a preponderance of the evidence. Wis. Stat. § 440.20(3). However, because of the Respondent’s failure to answer the allegations in the complaint and default, the facts in this proceeding are undisputed and are found based on the complaint.

Violations

The Board has the authority to impose discipline against the Respondent. 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 provides the Board with grounds for taking disciplinary action on the Respondent’s license as follows:

- a. Wis. Admin. Code § N 7.03(1)(c). After request of the Board, failing to cooperate in a timely manner, with the board's investigation of a complaint filed against a license holder.
- b. Wis. Admin. Code § N 7.03(2). Violating a law substantially related to the practice of nursing.
- c. Wis. Admin. Code § N 7.03(8)(e). Obtaining, possessing, or attempting to obtain or possess a drug without lawful authority.

The Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code § N 7.03(1)(c) by failing to cooperate in a timely manner with the Board's investigation. The Respondent failed to reply to an October 9, 2020 email request for information and failed to comply with a subpoena for her telephone appearance on February 25, 2021. Additionally, the Respondent did not return the call from the February 25, 2021 voicemail message left for her.

The Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code § N 7.03(2) by violating a law substantially related to the practice of nursing. Sections 440.03(4) and 885.01(4) of the Wisconsin Statutes provide the Department with authority to issue subpoenas for the attendance of witnesses and the production of documents or other materials prior to the commencement of disciplinary proceedings. In the case at hand, the Division utilized this authority when a Division investigator sent a subpoena to the Respondent via email and U.S. mail to the Respondent's address on record with the Department requiring her appearance for a telephone interview scheduled for February 25, 2021. The Respondent was legally obligated to comply with the subpoena. She failed to do so and as such, her actions are in violation of Wis. Stat. §§ 440.03(4) and 885.01(4).

The provisions and requirements of Wis. Stat. §§ 440.03(4) and 885.01(4) are substantially related to the practice of nursing. The Department, through the Division, is responsible for investigating and prosecuting nurses who are licensed in Wisconsin and who have allegedly violated laws related to the practice of nursing. The Department's subpoena power is one of the most important tools available to the Division to carry out investigations. The subpoena issued to the Respondent was only seeking information related to the Respondent's practice and licensure as a nurse in Wisconsin and the allegations of wrongdoing in the case at hand. Had the Respondent not been licensed as a nurse in Wisconsin, she would not have been subject to a subpoena in the case at hand. As such, the Respondent's practice as a registered nurse in Wisconsin is substantially related to the violation of Wis. Stat. §§ 440.03(4) and 885.01(4).

The Respondent is also in violation of Wis. Admin. Code § N 7.03(8)(e) as the Respondent obtained, possessed, or attempted to obtain or possess a drug without lawful authority. The Respondent was the last licensed nurse to take custody of the modafinil card before it was reported missing. The Respondent was unable to recall counting the modafinil medication on May 12, 2020. Nurse A recalled counting the modafinil medication with the Respondent during shift change on May 12, 2020. Unlike Nurse A, the Respondent refused to submit to a drug test, and she failed to return the phone calls from the Facility. Such evidence,

coupled with the Respondent's failure to file an answer to the complaint and failure to appear for the prehearing conference establishes by a preponderance of the evidence that the Respondent obtained, possessed, or attempted to obtain or possess a drug without lawful authority.

By engaging in conduct qualifying as grounds for taking disciplinary action on her license, along with the Respondent's failure to make any argument to the contrary, the Respondent is subject to discipline pursuant. Wis. Stat. § 441.07(1g)(b), (c), 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 the Respondent's license to practice as a registered nurse be suspended indefinitely. The recommended discipline is appropriate and consistent with the purposes articulated in *Aldrich*.

The case at hand involved allegations of diversion of modafinil, a stimulant that is a Schedule IV controlled substance. Wis. Stat. § 961.20(2m)(bu). By repeatedly failing to cooperate with the Division's investigation on behalf of the Board of Nursing, the Respondent impeded the Division's investigation and put public safety at risk. To date, the Respondent maintains an active license to practice registered nursing in Wisconsin. The Board's duty to regulate the Respondent was severely impeded because of the Respondent's failure to cooperate with the Division's investigation and the hearing proceedings. An Order that suspends the Respondent's license is necessary to ensure that the Respondent is not diverting controlled substances and that the Respondent cooperates with the Board that issued and regulates her license.

The Order allows the Respondent to petition the Board to stay the suspension. The Board has authority to stay the suspension once the Respondent cooperates with the Division concerning this matter, by providing any information requested by the Division in relation to this matter.¹ The Order allows the Board to institute additional limitations and/or restrictions on the Respondent's license, following the Respondent's cooperation with the Division. Depending on the information provided by the Respondent to the Division, such limitations and/or restrictions may be less than a suspension and allow the Respondent to return to practice as a registered nurse.

Suspending the Respondent's license indefinitely under these conditions protects the public from other potential instances of misconduct. "Protection of the public is the purpose of

¹ Division investigations involving diversion include, among other things, questions concerning a respondent's prior and current drug and alcohol use, AODAs, prior allegations of diversion, and current employment status and job duties.

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 suspension 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 a registered nurse who fails to cooperate with a lawful investigation into her conduct is competent to practice nursing.

Suspending the Respondent’s license indefinitely also deters other credential holders from engaging in similar conduct. The Respondent has disregarded the Board’s authority and the laws in place to protect public health and welfare. Therefore, the suspension of the Respondent’s license to practice nursing in Wisconsin is an appropriate response.

The Board has not previously considered a case similar to the facts at hand and resolving in a suspension. However, other health professions have addressed similar conduct and the Board takes its cue from that precedent. *See In the Matter of Disciplinary Proceedings Against Manuel J. Thomas, M.D.*, Order Number 0007046 (October 21, 2020) (Medical Examining Board suspended the respondent’s license indefinitely for failing to cooperate with investigation and proceedings)²; *See In the Matter of Disciplinary Proceedings Against Michael N. Mangold, M.D.*, Order Number 0002433 (May 15, 2013) (Medical Examining Board suspended the respondent’s license indefinitely or until a showing that the 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)³; and, *In the Matter of Disciplinary Proceedings Against Ossama Abdellatif, M.D.*, Order Number LS0904201MED (September 16, 2009) (Medical Examining Board suspended the respondent’s license indefinitely for failing to cooperate with the Board’s investigation and practicing medicine under another name).⁴

Based upon the facts of this case and the factors set forth in *Aldrich*, an indefinite suspension of the Respondent’s license, pursuant to the terms and conditions of the Order below, is warranted.

Costs

The Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against the 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

² <https://online.drl.wi.gov/decisions/2020/ORDER0007046-00017113.pdf>

³ <https://online.drl.wi.gov/decisions/2013/ORDER0002433-00008486.pdf>

⁴ <https://online.drl.wi.gov/decisions/2009/ls0904201med-00076642.pdf>

determining if all or part of the costs should be assessed against a 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 the Respondent to pay the full costs of the investigation and prosecution of these proceedings. The Respondent defaulted, and the factual allegations identified in this decision were deemed admitted. The allegations involve serious charges of diversion of a controlled substance, violation of a substantially related law, and failure to cooperate with the Division's investigation. The level of discipline sought is an indefinite suspension, a high level of discipline responsive to the violations in this matter. The Respondent failed to cooperate with the Division's investigation and this disciplinary process by failing to respond to the Division's requests for information, failing to answer the complaint, and failing to appear for the prehearing conference. The Respondent has not offered any acceptable justification for her actions.

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

ORDER

For the reasons set forth above, IT IS ORDERED:

1. The Respondent's license to practice as a registered nurse in Wisconsin (license no. 229472-30), and the Respondent's right to renew her license, are **SUSPENDED** for an indefinite period.
2. The Respondent may petition the Board for a stay of suspension after contacting the Department Monitor and providing any information requested by the Board or its designee in relation to this matter.
3. The Board or its designee may stay the suspension upon determination that the Respondent has cooperated with the Division concerning this matter, by providing any information requested by the Division in relation to this matter.
4. If the Board grants the Respondent's petition for a stay of suspension, the Board or its designee may impose any conditions and/or limitations on the Respondent's license deemed appropriate to protect the health, safety, and welfare of patients and the public.

5. Should the Respondent have a Wisconsin multistate license pursuant to the Enhanced Nurse Licensure Compact (Compact), the Respondent may not practice in any Compact state, other than Wisconsin, while the Respondent's license is encumbered by any term(s) of this Order or subsequent orders.

6. The Respondent shall pay all recoverable costs in these matters in an amount to be established pursuant to Wis. Admin. Code. § SPS 2.18.

7. Petitions, payment of costs (made payable to the Department of Safety and Professional Services), and any other questions or submissions related to this Order, may be directed to the Department Monitor at:

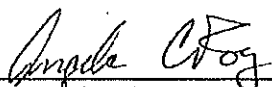
Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

The Respondent may also submit payment online at: <http://dpsmonitoring.wi.gov>

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

Dated at Madison, Wisconsin, on June 14, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
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By: 

Angela Chaput Foy
Administrative Law Judge