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Before the
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against Leah A. Stocks, R.N., Respondent.

FINAL DECISION AND ORDER

Order **ORDER 0007517**

Division of Legal Services and Compliance Case No. 20 NUR 350

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, appearing to be "M. J. ...", written over a horizontal line.

Member
Board of Nursing



**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Disciplinary Proceedings Against
Leah A. Stocks, R.N., Respondent.

DHA Case No. SPS-21-0022
DLSC Case No. 20 NUR 350

PROPOSED DECISION AND ORDER

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

Leah A. Stocks, R.N.
5845 Sheldon Street
Gratiot, WI 53541

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 Leah A. Stocks, R.N. (Respondent), by the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), on April 7, 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, the undersigned Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for May 14, 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. Respondent did not appear.

Based on 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 May 19, 2021, the ALJ issued an Amended Notice of Default against Respondent and ordered that the Division file a recommended proposed decision and order no later than June 14, 2021. 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 registered nursing, having license number 201424-30, first issued on June 18, 2014, and current through February 28, 2022.

2. The most recent address on file with the Department for Respondent is 5845 Sheldon Street, Gratiot, Wisconsin 53541.

3. On June 6, 2017, Respondent in Lafayette County Case no. 2016CF000076 was convicted of one (1) count of Theft-Movable Property \leq \$2,500, Party to a Crime, a misdemeanor in violation of Wis. Stat. §§ 943.20(1)(a) and 939.05 and one (1) count of Criminal Damage to Property, Party to a Crime, a misdemeanor in violation of Wis. Stat. §§ 943.01(1) and 939.05. The judgment of conviction was entered on June 7, 2017.

4. Respondent failed to report the convictions to the Wisconsin Board of Nursing (Board), or the Department, within 48 hours after entry of the judgment of conviction.

5. Respondent reported the convictions when she submitted a renewal application for her registered nursing license on May 11, 2020. On July 13, 2020, Respondent's registered nursing license was renewed because it was determined that the convictions were not substantially related to the practice of nursing.

6. The Board credentialing liaison referred the matter of Respondent's late report of convictions to the Board Screening Panel for further review. The Screening Panel reviewed the referral and opened complaint 20 NUR 350.

7. On July 13, 2020, the Division emailed Respondent, at her email of record with the Department, requesting a response to the allegations. Respondent did not reply.

8. On July 21, 2020, the Division emailed Respondent, at her email of record with the Department, requesting a response to the allegations. Respondent did not reply.

9. On July 29, 2020, the Division mailed Respondent, to her mailing address of record with the Department, requesting a response to the allegations. Respondent did not reply.

Facts Related to Default

10. The Notice and Complaint were served on Respondent at her address of record with the Department on April 7, 2021, by both certified and regular mail.

11. Respondent did not file an Answer to the Complaint. After the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for May 14, 2021. Notice of this prehearing conference was sent to both parties, with instructions that Respondent contact the ALJ with a telephone number at which Respondent could be reached for the conference no later than May 13, 2021. Respondent did not contact the ALJ prior to the prehearing conference.

12. At the prehearing conference held on May 14, 2021, Attorney Gretchen Mrozinski appeared on behalf of the Division. The ALJ attempted to reach Respondent at a telephone number that was on file for Respondent. The ALJ telephoned Respondent at approximately 10:05 a.m., and 10:15 a.m. Respondent did not answer either telephone call, and the outgoing voicemail message stated that the mailbox was full, and no messages could be left. As of the date of this proposed decision and order, the ALJ has not received a phone call or other form of contact from Respondent.

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

14. On May 19, 2021, the ALJ issued an Amended Notice of Default and ordered that the Division file and serve a recommended proposed decision and order no later than June 14, 2021.

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

DISCUSSION

Jurisdictional Authority

The 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 and Complaint upon Respondent by mailing a copy 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).

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 May 14, 2021. Therefore, Respondent is in default pursuant to Wis. Admin. Code § SPS 2.14, and findings and an order may be entered on the basis of the Complaint and other evidence.

Burden of Proof

The burden of proof in disciplinary proceedings before the Board is a preponderance of the evidence. *See* Wis. Stat. § 440.20(3). Because Respondent is in default and has failed to answer the allegations in the Complaint, the facts in this proceeding are undisputed and are found on the basis of the Complaint.

Violations

The Board has the authority to impose discipline against 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). Wisconsin Admin. Code § N 7.03 further specifies that the following constitute grounds for disciplinary action:

- a. After a request of the Board, failure to cooperate in a timely manner, with the Board’s investigation of a complaint filed against a license holder. Wis. Admin. Code § N 7.03(1)(c).
- b. Failure to notify the Board of a felony or misdemeanor in writing within 48 hours after entry of the judgment of conviction, including the date, place, and nature of the conviction or finding. Wis. Admin. Code § N 7.03(1)(h).

Here, Respondent has engaged in conduct qualifying as grounds for disciplinary action pursuant to Wis. Admin. Code § N 7.03(1)(c) by failing to cooperate in a timely manner with the Board’s investigation. Respondent failed to reply to three Division requests for a response to the allegations in July of 2020. In addition, Respondent failed to appear and participate in these proceedings. Respondent’s actions, or lack thereof, demonstrate a repeated failure to cooperate in a timely manner with the Board’s investigation.

Respondent also engaged in conduct qualifying as grounds for disciplinary action pursuant to Wis. Admin. Code § N 7.03(1)(h) by failing to timely notify the Board of her two misdemeanor convictions in June 2017.

Therefore, 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 receive a reprimand and be required to complete three credits of education on the topic of complying with the Wisconsin Nurse Practice Act. The Division further recommends that if Respondent fails to complete the education within 60 days of the date of the Board order, her license to practice nursing in Wisconsin should be suspended until she complies with the Board order. Given that Respondent has made no argument to the contrary and has failed to appear for any part of these proceedings, and because the recommended discipline is consistent with the purposes articulated in *Aldrich* and case law, I adopt the Division's recommendation.

This case involves Respondent's failure to timely report multiple misdemeanors as well as her failure to cooperate in the Division's investigation on behalf of the Board of Nursing. By repeatedly failing to cooperate with the Division's investigation, Respondent ignored the requirements of Wisconsin's Nurse Practice Act found in Wis. Stat. ch. 441. To date, Respondent continues to ignore the requirements of the Wisconsin Nurse Practice Act yet maintains an active license to practice registered nursing in Wisconsin. Respondent's failure to cooperate with the Division's investigation and these hearing proceedings severely impeded the Board's duty to regulate her. The Division's recommended discipline is appropriate to ensure that Respondent recognizes the Board's authority to regulate the practice of nursing in Wisconsin. Discipline is also necessary to ensure that the Board can carry out its most important obligation—that of protecting the public health, safety, and welfare. A reprimand alone is insufficient, as Respondent would have no incentive to respond to the Board and recognize the Board's authority. A reprimand, along with education and a potential suspension if Respondent fails to complete the education, will ensure that she comprehends the seriousness of the Board's authority, her duties and responsibilities under the Wisconsin Nurse Practice Act, and the privilege of having a license to practice nursing in Wisconsin.

The Division's recommended discipline also protects the public from other potential instances of misconduct by ensuring that the Board can adequately monitor Respondent's conduct in the future. Courts have stated that "[p]rotection 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).

Likewise, the recommended discipline deters other credential holders from engaging in similar conduct. Respondent has completely disregarded the Board's authority as well as the laws in place to protect public health and welfare. It is imperative that Wisconsin nurses understand the authority of the Board and their duty to cooperate with investigations.

Finally, the recommended discipline is consistent with Board precedent. *See In the Matter of Disciplinary Proceedings Against Kevin J. Fitzgerald, R.N.*, Order Number 0005587 (January 11, 2018) (Board reprimanded nurse for failing to cooperate with the Board's investigation, ordered education, and provided for suspension should the nurse fail to comply with the Board order)¹; *See In the Matter of Disciplinary Proceedings Against Stephanie S. Green-Schlafer, R.N.* Order Number 0005546 (December 14, 2017) (Board reprimanded nurse and limited her license for failing to timely report convictions, which involved the ingestion of alcohol, and provided for a license suspension should she violate the Board order).²

Based upon the facts of this case and the factors set forth in *Aldrich*, a reprimand, education, and potential suspension of 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 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 investigation and prosecution of these proceedings. Respondent is in default, and the factual allegations identified in this decision were deemed admitted. The allegations involve serious charges of failure to cooperate with the Board's investigation and failure to report multiple misdemeanor convictions—violations that represent a clear disregard for the Board's authority. The level of discipline sought is a reprimand, education, and potential suspension. This is a substantial level of discipline responsive to the violations in this matter. 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. Respondent has not offered any acceptable justification for her actions.

¹ *In the Matter of Disciplinary Proceedings Against Kevin J. Fitzgerald, R.N.*, Order Number 0005587

² *In the Matter of Disciplinary Proceedings Against Stephanie S. Green-Schlafer, R.N.* Order Number 0005546

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 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. Respondent is REPRIMANDED.
2. Respondent's license to practice as a registered nurse (license number 201424-30) and her privilege to practice in Wisconsin pursuant to the Enhanced Nurse Licensure Compact (Compact), are LIMITED as follows:
 - a. Within sixty (60) days of the date of this Order, Respondent shall at her own expense take and successfully complete three (3) credits on the topic of compliance with the Wisconsin Nurse Practice Act.
 - b. Each course attended in satisfaction of this Order must be pre-approved by the Board or its designee. Respondent shall be responsible for locating course(s) satisfactory to the Board and for obtaining the required approval of the course(s) from the Board or its designee. Respondent must take and pass any exam offered for the course(s).
 - c. 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. 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 and may not be used in any future attempt to upgrade a credential.
 - d. The Board's monitoring liaison may change the number of credit hours and/or education topics in response to a request from Respondent. The monitoring liaison may consider the topic availability and/or hours of education when determining if a change to the ordered education should occur.
 - e. This limitation shall be removed from Respondent's license after satisfying the Board or its designee that Respondent has successfully completed all the ordered education.
3. Respondent shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18.
4. Any requests, petitions, payment of costs (made payable to the Department of Safety and Professional Services), and other information required by this Order shall be submitted 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) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Respondent may also submit this information online at: <https://dpsmonitoring.wi.gov>.


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

6. In the event Respondent violates any term of this Order, Respondent's license (number 201424-30), or Respondent's right to renew her license, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board may, in addition and/or in the alternative refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

7. 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 July 14, 2021.

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