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Before the
State Of Wisconsin
Board of Nursing

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

FINAL DECISION AND ORDER

ORDER 0007519

Division of Legal Services and Compliance
Case Nos. 21 NUR 018 and 21 NUR 020

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 R. Nieuwenhuis, R.N., Respondent.

DHA Case No. SPS-21-0029
DLSC Case Nos. 21 NUR 018
and 21 NUR 020

PROPOSED DECISION AND ORDER

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

Amanda R. Nieuwenhuis, R.N.
Post Office Box 432
Darien, WI 53114

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 R. Nieuwenhuis, R.N. (Respondent), by the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), on April 21, 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 in the present matter.

Following expiration of the 20-day period to file an Answer, the undersigned Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for May 24, 2021, at 11:00 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 24, 2021, the ALJ issued a Notice of Default against Respondent and ordered that the Division file a recommended proposed decision and order no later than June 23, 2021. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-24 are taken from the Division's Complaint filed against Respondent in this matter.

1. Amanda R. Nieuwenhuis, R.N. (Respondent) (DOB: 04/26/1987) is licensed in the state of Wisconsin as a registered nurse, having license number 195769-30, first issued on June 5, 2013, and current through February 28, 2022. Respondent's license is currently suspended per Wisconsin Board of Nursing (Board) Final Decision and Order No. 0007150 issued January 14, 2021.¹ (Complaint, ¶ 1)

2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is Post Office Box 432, Darien, Wisconsin 53114. (Complaint, ¶ 2)

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3. From November 10, 2020, to January 15, 2021, Respondent was employed as a Nurse Supervisor at a nursing home facility in Janesville, Wisconsin (Facility). (Complaint, ¶ 3)

4. On December 31, 2020, a nurse and a medication technician at the Facility reported to the Facility's Administrator that when they accessed the Facility's contingency box, one of the medication packages was in a plastic bag stapled shut with the identifying blue tags cut off. (Complaint, ¶ 4)

5. On January 6, 2021, the Facility conducted an internal investigation for suspected misappropriation of medication. The contingency box was reviewed, and no medications were found to be missing. (Complaint, ¶ 5)

6. During the investigation, the Facility's Administrator spoke with the pharmacist working at the pharmacy that delivered the contingency box to the Facility on December 30, 2020. The pharmacist stated all medication in the contingency box was accounted for and the correct medication was delivered. The contingency box was delivered around 6:00 a.m. on December 30, 2020, and was signed for by Respondent. The pharmacist confirmed that the medication in the contingency box would not be packaged in a plastic bag stapled shut and with the identifying blue tags cut off. (Complaint, ¶ 6)

¹ <https://online.drl.wi.gov/decisions/2021/ORDER0007150-00017324.pdf>

7. The Facility obtained the following information during the investigation:

- a. In the December 30, 2020 morning report, Respondent stated Resident A had been up all night and had ripped pages out of the narcotic book and wrote on them. When Respondent was asked to provide the pages in order to accurately count the narcotic book, Respondent said she tossed them out and created new pages.
- b. Respondent reported Resident A was at the nurse's station attempting to unlock the dietary manager's office door. Resident A also had binders and markers and was drawing on the papers in the narcotic book rendering the pages in an "unusable condition". Respondent stated no medications were missing, so she made new narcotic count sheets, and charted Resident A's behavior.
- c. Resident B and Resident C had missing narcotic sheets on the same night shift that Respondent was working.
- d. The as needed (PRN) pain medication for Resident B was signed out twice by Respondent on the same night shift. Resident B did not request or receive pain medication that night.

(Complaint, ¶ 7)

8. On January 6, 2021, the Facility interviewed Respondent. During the interview:

- a. Respondent denied knowledge of pending investigations by the Division of Legal Services and Compliance (Division) regarding her nursing license in Division Case Nos. 17 NUR 346 and 18 NUR 750. The investigations culminated in Board Final Decision and Order No. 0007150 issued on January 14, 2021.
- b. Respondent stated her brother was in the car with her when she was recently pulled over and found to have marijuana in the car. Respondent said it was her brother's marijuana.
- c. Respondent denied accessing the contingency box.
- d. Respondent stated that she threw the ripped-out pages from the narcotic book in the shred bin.
- e. The Facility's Administrator confirmed the shred bin had not been emptied since December 22, 2020, and searched the shred bin for the missing narcotic book sheets but could not find them.

(Complaint, ¶ 8)

9. On January 6, 2021, Respondent volunteered to undergo a saliva drug screen test; however, the test could not be performed as Respondent did not provide enough specimen. Respondent was then sent to complete a urine drug screen (UDS). (Complaint, ¶ 9)

10. The Facility was informed that the specimen provided by Respondent for the UDS on January 6, 2021, was canceled because the specimen was "non-human". (Complaint, ¶ 10)

11. On January 13, 2021, the Facility interviewed Respondent again who was unable to explain why the specimen she provided for the UDS on January 6, 2021, was non-human. Respondent was taken to complete an additional UDS. The UDS results came back negative on January 15, 2021. (Complaint, ¶ 11)

12. The Facility terminated Respondent's employment on January 15, 2021, for substantial misconduct and violating the following work rules:

- a. Lying and compromising the integrity of an investigation.
- b. Misconduct for the willful disregard for cooperation and participation within an ongoing investigation.
- c. Failed drug test since the specimen provided was determined to be non-human specimen by the external lab.
- d. Loss of licensure to work as a registered nurse.

(Complaint, ¶ 12)

13. On January 22, 2021, the Division Monitor emailed Respondent at the address on file with the Department regarding instructions and resources for complying with the January 14, 2021 Board Final Decision and Order No. 0007150, but to date has not received a response from Respondent. (Complaint, ¶ 13)

14. On January 27, 2021, the Division sent a request for a response to the allegations in this matter to Respondent's email address on file with the Department. The Division has not received a response. (Complaint, ¶ 14)

15. On February 4, 2021, the Division sent a second request for a response to the allegations in this matter to Respondent's email address on file with the Department. The Division has not received a response. (Complaint, ¶ 15)

16. On February 11, 2021, the Division mailed a request for a response to the allegations in this matter to Respondent's address on file with the Department. The Division has not received a response. (Complaint, ¶ 16)

17. On February 23, 2021, the Division sent by certified mail a request for a response to the allegations in this matter to Respondent's address on file with the Department and to the address provided for Respondent on Wisconsin Consolidated Court Automation Programs (CCAP). The Division has not received a response. (Complaint, ¶ 17)

18. On March 11, 2021, the Division called the telephone number for Respondent on file with the Department. The Respondent did not answer, and the voicemail box was full. (Complaint, ¶ 18)

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19. The Division received a complaint that on January 26, 2021, Respondent testified in Walworth County Circuit Court Case No. 2017FA000440 that she was employed by the Facility and that the Facility was aware that her license was suspended. (Complaint, ¶ 19)

20. On January 28, 2021, the Division sent a request for a response to the allegations in this matter to Respondent's email address on file with the Department. The Division has not received a response. (Complaint, ¶ 20)

21. On February 15, 2021, the Division sent by certified mail a request for a response to the allegations in this matter to Respondent's address on file with the Department and to the address provided for Respondent on Wisconsin Consolidated Court Automation Programs (CCAP). The Division has not received a response. (Complaint, ¶ 21)

22. On March 11, 2021, the Division called the telephone number for Respondent on file with the Department. The Respondent did not answer, and the voicemail box was full. (Complaint, ¶ 22)

23. On December 30, 2020, Respondent was pulled over by a deputy of the Walworth County Sheriff's Department. Respondent was issued a citation for operating with a suspended driver's license. During the stop, the deputy noticed the smell of marijuana emanating from the vehicle and asked Respondent if there was marijuana in the vehicle. Respondent handed over a plastic bag with a green leafy substance believed to be marijuana. A search of the vehicle yielded drug paraphernalia. The property list in the police report detailed 1.5 grams of marijuana, two (2) plastic bags containing remnants of marijuana, two (2) smoking pipes containing marijuana, an orange paper bag with remnants of marijuana, and two (2) empty black plastic containers with the words "gummies" and "mango" printed on them which also read 10mg THC per piece and 100mg THC total. In Walworth County Circuit Court Case Nos. 2021FO000005 and 2021FO000004, Respondent was found guilty of possession of drug paraphernalia, and possession of marijuana, both forfeitures. (Complaint, ¶ 23)

24. On February 21, 2021, an officer with the City of Delavan Police Department responded to a call at a private residence in Darien, Wisconsin, for a report of property damage. The officer was informed by the owner of the residence that Respondent had just tried to run him over and had damaged his gazebo with her vehicle. After investigating, Respondent was taken into custody and charged in Walworth County Circuit Court Case No. 2021CF000116 with second degree recklessly endangering safety (felony), criminal damage to property (misdemeanor), and disorderly conduct (misdemeanor). (Complaint, ¶ 24)

Facts Related to Default

25. The Notice and Complaint were served on Respondent at her address of record with the Department on April 21, 2021, by both certified and regular mail.

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

27. After the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for May 24, 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 21, 2021. Respondent did not provide a telephone number where she could be reached for the prehearing.

28. At the prehearing conference held on May 24, 2021, Attorney Gretchen Mrozinski appeared on behalf of the Division. The Division provided a telephone number for Respondent, whereupon the ALJ left a voicemail for Respondent indicating that Respondent should contact the ALJ at the telephone number provided within twenty minutes. The Respondent did not contact the ALJ.

29. The ALJ also attempted to contact Respondent via electronic mail on May 24, 2021, and warned the Respondent that her failure to reply could result in a finding of default against her; however, Respondent has not responded to the ALJ.

30. The Division moved for default based on the 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).

31. On May 24, 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 23, 2021.

32. 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). 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 24, 2021. Therefore, Respondent is in default, and findings and an order may be entered on the basis of the Complaint. The burden of proof in disciplinary proceedings before the Board is a preponderance of the evidence. *See*, Wis. Stat. § 440.20(3). However, given Respondent's failure to answer the allegations in the Complaint and default, 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 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 Stat. §§ 441.07(1g)(b), (c), and (d), along with Wisconsin Admin. Code § N 7.03 provide the Board with grounds for taking disciplinary action. Based upon the allegations contained in the Complaint against the Respondent, the following violations and corresponding sections of Wis. Admin. Code § N 7.03 provide grounds for taking disciplinary action on Respondent's license:

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

...

(c) After a request of the board, failing to cooperate in a timely manner, with the board's investigation of a complaint filed against a license holder. There is a rebuttable presumption that a credential holder who takes longer than 30 days to respond to a request of the board has failed to cooperate in a timely manner.

(d) Practicing without an active license.

...

(g) Violating any term, provision, or condition of any order of the board.

...

(2) Violating or aiding and abetting a violation of any law substantially related to the practice of nursing or being convicted of any crime substantially related to the practice of nursing. A certified copy of a judgment of conviction is prima facie evidence of a violation.

...

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

(a) Falsifying or inappropriately altering reports, patient documentation, agency records, or other health documents.

...

(g) Submitting false information in the course of an investigation.

...

(8) Improper prescribing, dispensing, or administering medication or drug related offenses, including any of the following:

...

(e) Obtaining, possessing or attempting to obtain or possess a drug without lawful authority.

In addition to the above, Wis. Stat. § 441.07(1g)(c) provides for discipline should a nurse commit acts which show the nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency. Finally, Wis. Stat. § 440.20(5) provides the Board with authority to discipline a nurse credentialed by the Board who fails to respond to the Board or Department, within 30 days, to a request for information.

Respondent engaged in conduct that met multiple grounds for taking disciplinary action on her nursing license under Wis. Admin. Code § N 7.03, Wis. Stat. §§ 440.20(5) and 441.07(1g)(c). For example, by failing to cooperate in a timely manner with the Board's investigation and failing to respond to the satisfaction of the Department or Board, within 30 days to a request for information from the Department or Board in connection with an investigation of alleged misconduct, the Division may take disciplinary action on the Respondent's license pursuant to Wis. Admin. Code § N 7.03(1)(c) and Wis. Stat. § 440.20(5)(a). The Division sent requests for information to Respondent via Respondent's email address of record with the Department on four occasions in January and February 2021. The Division mailed requests for information to Respondent's address of record with the Department on three occasions in January and February 2021. (Complaint, ¶¶ 13-17, 20-21) The Division telephoned Respondent, using Respondent's telephone number of record with the Department, in March 2021. (Complaint, ¶¶ 18 and 22) Respondent failed to respond to all requests from the Division for information related to the cases at hand. In addition, Respondent failed to appear and participate in these proceedings. Respondent's actions, or lack thereof, demonstrate Respondent's repeated failure to cooperate in a timely manner with the Board's investigation.

In addition, the alleged facts support a finding that the Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code § N 7.03(1)(d) by practicing nursing without an active license. On January 14, 2021, Respondent's license to practice nursing was suspended by the Board. (Complaint, ¶ 1) As such, as of January 14, 2021, Respondent could not practice professional nursing. Pursuant to Wis. Stat. § 441.001(4)(d), professional nursing includes the supervision of a patient and the supervision and direction of licensed practical nurses and less skilled assistants. Respondent's employment as a nurse supervisor with a nursing facility continued through January 15, 2021. Therefore, Respondent practiced nursing without an active license, for at least one day following the suspension of her license. Similarly, on January 26, 2021, Respondent testified in Walworth County Circuit Court Case No. 2017FA000440 that she continued to be employed with the nursing facility despite the suspension of her license. (Complaint, ¶ 19) Pursuant to Wis. Stat. § 441.06(4), no one may practice or attempt to practice professional nursing, nor use the title, letters, or anything else to indicate that she is a registered or professional nurse unless she is licensed. Respondent was not licensed as a nurse after January 14, 2021, as her license was suspended. Under such circumstances, Respondent practiced nursing without an active license. Respondent's conduct was also a violation of Wis. Admin. Code. § N 7.03(1)(g) as she violated the terms of Board Order No. 0007150 which suspended her license to practice nursing effective January 14, 2021.

The Complaint further alleges facts establishing that 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 or aiding and abetting a violation of any law substantially related to the practice of nursing. In Walworth County Circuit Court Case Nos. 2021FO000005 and 2021FO000004, Respondent was found guilty of possession of drug paraphernalia, and possession of marijuana. (Complaint, ¶ 23) The Board has previously found that a conviction for possession of drugs is substantially related to the practice of nursing. See, *In the Matter of Disciplinary Proceedings Against Cheryl A. Sorensen, R.N.*, Order Number 0003747 (February 12, 2015) (nurse found guilty of possession of THC)². In addition, Wis. Admin. Code. § N 7.03(8)(e) specifically prohibits a nurse licensed in Wisconsin from obtaining or possessing a drug without lawful authority. Respondent's actions in this regard, along with the above-cited violations, are also a violation of Wis. Stat. §

² <https://online.drl.wi.gov/decisions/2015/ORDER0003747-00010860.pdf>

441.07(1g)(c) as they establish that the Respondent to be unfit or incompetent by reason of negligence, abuse of alcohol, or other drugs. Based upon the uncontested facts in this matter, the Division has demonstrated that the Respondent's actions constitute a violation of law substantially related to the practice of nursing and unfit.

Further, the Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code § N 7.03(5)(a) by falsifying or inappropriately altering reports, patient documentation, agency records, or other health documents. Respondent created new narcotic count sheets on or about December 30, 2020, advising the Facility that a resident had colored on the original narcotic count sheets. (Complaint, ¶¶ 7 and 8) Respondent's assertions were proven false by the Facility when the allegedly "unusable" original narcotic count sheets could not be located in the shred bin where Respondent stated she had placed them. (Id.) In addition, Respondent documented that she signed out pain medication for Resident B on two occasions on the same night shift, yet Resident B did not request or receive pain medication that night. (Id.) As such, Respondent's actions amount to falsification and inappropriately altering reports, patient documentation, agency records, or other health documents.

Finally, the Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code § N 7.03(5)(g) by submitting false information in the course of an investigation. During the Facility's investigation of Respondent, Respondent denied knowledge of pending investigations by the Division involving Case Nos. 17 NUR 346 and 18 NUR 750. (Complaint, ¶ 8) Respondent also falsely stated that she threw the "unusable" original narcotic count sheets in the shred bin. (Id.) Another example of the Respondent's submission of false information occurred when she submitted "non-human" urine and represented it as her own urine, via a January 6, 2021 Facility drug test. (Complaint, ¶¶ 9-11) The Division has demonstrated that the above actions by Respondent amount to the submission of false information during the course of an investigation contrary to Wis. Admin. Code § N 7.03(5)(g) and thus, are additional grounds for taking disciplinary action against the Respondent's license.

By engaging in conduct qualifying as grounds for taking disciplinary action on her license, along with Respondent's failure to make any argument to the contrary, Respondent is subject to discipline pursuant to 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 Respondent's license to practice as a registered nurse in Wisconsin, along with Respondent's right to renew that license, be revoked. 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.

The recommended discipline protects the public from other potential instances of misconduct. "Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a license is granted to an individual, the Board is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the 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).

Respondent's license to practice nursing is currently suspended via Board Order No. 0007150, based upon the following conduct: Respondent failed to cooperate in a timely manner with the Board's investigation in Division Case Nos. 17 NUR 346 and 18 NUR 750; Respondent departed from or failed to conform to the minimal standards of acceptable nursing practice; Respondent practiced nursing while under the influence of alcohol, illicit drugs, or while impaired by the use of legitimately prescribed pharmacological agents or medications; and, Respondent obtained, possessed, or attempted to obtain or possess a drug without lawful authority. The discipline issued via Board Order No. 0007150 in response to Respondent's severe and extensive violations of Wis. Stat. ch. 441 and Wis. Admin. Code ch. N 7. The cases at hand contain many similarities to 17 NUR 346 and 18 NUR 750, along with additional violations. Board Order No. 0007150 has not deterred Respondent from continuing down a path that presents clear and substantial danger to the public. Further, by not responding to the Board's investigation or the current Complaint, there is no evidence that rehabilitation of Respondent is possible. Based upon the repeated nature of the Respondent's violations, the only course of action certain to protect the public is to revoke Respondent's license to practice nursing in Wisconsin.

Revocation of Respondent's license also deters other nurses licensed in Wisconsin from engaging in similar conduct. Respondent has repeatedly and blatantly disregarded the Board's authority, as well as the laws in place to protect public health, safety, and welfare. It is imperative that Wisconsin nurses understand the authority of the Board and responsibility to comply with Wis. Stat. ch. 441 and Wis. Admin. Code ch. N 7. It is important that Wisconsin nurses understand that revocation of their license to practice nursing is a potential consequence of serious violations of applicable law. Thus, the recommended discipline will act as a deterrent to other nurses who engage in similar conduct.

The recommended discipline is also in line with Board precedent. *See In the Matter of Disciplinary Proceedings Against Jamie L. Soteropoulos, R.N.*, Order Number 0006273 (July 11, 2019) (License revoked as nurse was convicted of a crime substantially related to the practice of nursing; departed from or failed to conform to the minimal standards of acceptable nursing practice; and, obtained, possessed or attempted to obtain or possess a drug without lawful authority)³; *See In the Matter of Disciplinary Proceedings Against Rochelle A. Current, R.N.*, Order Number 0006238 (June 13, 2019) (License revoked as nurse failed to report criminal convictions to the Board, and had a license to practice nursing in Arkansas denied, revoked, suspended, limited or otherwise disciplined)⁴; and *See In the Matter of Disciplinary Proceedings Against Ann M. Lenck, R.N.*, Order Number 0006271 (July 11, 2019) (License revoked as nurse while currently suspended by the Board, incurred additional

³<https://online.drl.wi.gov/decisions/2019/ORDER0006273-00015692.pdf>

⁴<https://online.drl.wi.gov/decisions/2019/ORDER0006238-00015576.pdf>

violations of working as a nurse while suspended, and violated the terms of the Board order which ordered the suspension).⁵

Based upon the above facts, the factors set forth in *Aldrich*, and prior Board decisions, revocation of Respondent's Wisconsin registered nurse license or the right to renew such license, 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 defaulted and the factual allegations identified in this decision were deemed admitted. Respondent's misconduct began with Division Case Nos. 17 NUR 346 and 18 NUR 750, the result of which was a lengthy suspension and significant limitations. Nevertheless, Respondent continued to violate Wis. Stat. ch. 441 and Wis. Admin. Code ch. 7. Respondent refuses to acknowledge the authority of the Board and rule of law. Accordingly, Respondent's misconduct is extremely serious and warrants assessment of full costs.

The Division is seeking revocation of Respondent's license to practice nursing. There is no higher level of discipline achievable. Respondent has repeatedly failed to cooperate with the disciplinary process as evidenced in the case at hand, as well as Division Case Nos. 17 NUR 346 and 18 NUR 750. Respondent is currently subject to a suspension and limitations via Board Order No. 0007150, significant discipline that Respondent ignored. Such factors warrant assessment of full costs.

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.

⁵ <https://online.drl.wi.gov/decisions/2019/ORDER0006271-00015690.pdf>

ORDER

For the reasons set forth above, IT IS ORDERED that the registered nurse license of Respondent (license no 195769-30), and the right to renew such license, is REVOKED, effective on the date the final decision is signed by the Board.

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

Dated at Madison, Wisconsin, on this 7th day of July, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Kristin P. Fredrick
Administrative Law Judge