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Before the
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against Tanya R. Neath, L.P.N., R.N.,
Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0007029**

Division of Legal Services and Compliance Case No. 19 NUR 080

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 14th day of October, 2021.

Gregory J. Jolietowski

Member
Board of Nursing



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Tanya R. Neath, L.P.N., R.N., Respondent.

DHA Case No. SPS-21-0019
DLSC Case No. 19 NUR 080

PROPOSED DECISION AND ORDER

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

Tanya R. Neath, L.P.N., R.N.
710 Kari St., Apt. #2
Belleville, WI 53508

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 Lesley McKinney
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 Tanya R. Neath, L.P.N., R.N. (Respondent), by the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), on March 10, 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 April 22, 2021, at 10:00 a.m. Notice of this prehearing conference was sent to both parties. Attorney Lesley McKinney appeared on behalf of the Division. Respondent appeared *pro se*. Based on

Respondent's representations, the ALJ extended the time for her to file an answer and scheduled an adjourned telephone prehearing conference.

Respondent did not file an answer by the extended deadline of April 29, 2021. Based on Respondent's failure to file an answer to the Complaint, on May 4, 2021, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

The adjourned prehearing conference was held on May 27, 2021. Attorney McKinney appeared on behalf of the Division, and Respondent also appeared. Respondent provided a basis for her failure to answer. Based on the representations of the parties, the ALJ issued an order granting the Division's Motion for Default Judgment in part. The ALJ found that Respondent's basis for her failure to file an answer constituted good cause and Respondent was permitted to provide an answer pursuant to Wis. Admin. Code § SPS 2.14 by June 9, 2021. No answer was filed.

On June 11, 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 July 14, 2021. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-13 are taken from the Division's Complaint filed against the Respondent in this matter.

1. The Respondent, Tanya R. Neath, L.P.N., R.N., (Date of Birth: October 20, 1984) is licensed in the state of Wisconsin as a registered nurse, having license number 226377-30, first issued on January 25, 2016. This license expired on February 29, 2020 and has not been renewed. Pursuant to Board of Nursing (Board) Order No. 0005980, Respondent's right, under Wis. Stat. § 440.08(3), to renew her license upon payment of a fee until February 28, 2025, has been suspended. Respondent is also licensed in the state of Wisconsin as a licensed practical nurse, having license number 316658-31, first issued on March 27, 2013. This license expired on April 30, 2017, and has not been renewed. Pursuant to Board Order No. 0005980, Respondent's right, under Wis. Stat. § 440.08(3), to renew her license upon payment of a fee until April 29, 2022, has been suspended.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 710 Kari Street, Apartment 2, Belleville, Wisconsin 53508.

3. Between February and March 2019, Respondent was employed as a registered nurse at a facility in Oregon, Wisconsin (Facility).

4. Respondent was suspected of diverting narcotics and insulin from the Facility. The Facility terminated her employment on March 5, 2019.

5. Respondent was previously disciplined in Final Decision and Order 0005980 (Board Order No. 0005980), dated December 13, 2018, for narcotic diversion in Division Case Nos. 17 NUR 146 and 17 NUR 418.

6. The Facility's credible allegations of diversion bear substantial similarity to the facts and circumstances of Respondent's previous discipline.

7. On March 15, 2019, the Facility reported Respondent's termination to the Department Monitor pursuant to Board Order No. 0005980.

8. On March 26, 2019, the Board suspended Respondent's registered nurse license and the right to renew her expired licensed practical nurse license based on non-compliance with the terms of Board Order No. 0005980.

9. On December 1, 2020, the Department sent Respondent a response request to the email address provided by Respondent to the Department. Respondent did not respond.

10. On December 21, 2020, the Department emailed a second response request to Respondent's email address. Respondent did not respond.

11. On January 27, 2021, the Department left a voicemail message for Respondent at the telephone number provided by Respondent to the Department. Respondent did not return the telephone call.

12. On February 9, 2021, after conducting research via available public records to confirm valid contact information for Respondent, a letter was sent via United States Post Office to the address on record with the Department to Respondent requesting information related to the investigation. To date, Respondent has not responded.

13. As of the filing of this instant Complaint, Respondent remains non-compliant with Board Order No. 0005980.

Facts Related to Default

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

15. 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 22, 2021. Notice of this prehearing conference was sent to both parties. Attorney Lesley McKinney appeared on behalf of the Division. Respondent appeared. Based on Respondent's representations, the ALJ extended the time for Respondent to file an answer to April 29, 2021, and scheduled an adjourned telephone prehearing conference for May 27, 2021, at 10:00 a.m.

16. Respondent did not file an answer by the extended deadline of April 29, 2021. On May 4, 2021, the Division moved for default based on Respondent's failure to answer the Complaint pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

17. The adjourned prehearing conference was held on May 27, 2021, with Respondent, and Attorney McKinney on behalf of the Division, in appearance. Respondent provided a basis for her failure to answer. Based on the representations of the parties, the ALJ issued an order granting the Division's Motion for Default Judgment in part and held open the Division's request to file a Proposed Decision and Order. The ALJ found that Respondent's basis for her failure to file an answer constituted good cause and Respondent was permitted to provide an answer pursuant to Wis. Admin. Code § SPS 2.14. The ALJ ordered that Respondent file an answer no later than June 9, 2021, and that the answer should state whether Respondent admits or denies what is alleged in the Complaint. No answer was filed.

18. On June 11, 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 July 14, 2021.

19. 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 on 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."

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 file an answer to the Complaint within the extended period permitted by the ALJ. 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. *See* Wis. Stat. § 440.20(3). Given Respondent's failure to answer the allegations in the Complaint and finding of default, the allegations in the Complaint are deemed admitted per Wis. Admin. Code § SPS 2.09(3).

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), 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. Conduct that is grounds for the Board to take disciplinary action on a license includes, but is not limited to:

- a. 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. Wis. Admin. Code § N 7.03(1)(c).
- b. Violating any term, provision, or condition of any order of the Board. Wis. Admin. Code § N 7.03(1)(g).
- c. By failing to perform nursing with reasonable skill and safety. Wis. Admin. Code § N 7.03(6)(a).
- d. By departing from or failing to conform to the minimal standards of acceptable nursing practice that may create unnecessary risk or danger to a patient's life, health, or safety. Wis. Admin. Code § N 7.03(6)(c).
- e. Obtaining, possessing, or attempting to obtain or possess a drug without lawful authority. Wis. Admin. Code § N 7.03(8)(e).

By failing to cooperate in a timely manner with the Board's investigation and failing to satisfactorily respond to the Department or Board within 30 days of a request for information in connection with an investigation of alleged misconduct, Respondent engaged in conduct that constitutes grounds for disciplinary action on her license. Wis. Admin. Code §§ N 7.03(1)(c) and Wis. Stat. § 440.20(5)(a). In December 2020, the Division sent two requests for information to Respondent via her email address on record. The Division telephoned Respondent, using the telephone number on record with the Department and left a voicemail message for her in January 2021. In February 2021, after conducting research via available public records to confirm valid contact information for Respondent, a letter was sent via United States Post Office to the address on record with the Department to Respondent requesting information related to the investigation. Respondent failed to respond to all requests from the Division for information related to the cases at hand. In addition, Respondent failed to file an answer in these proceedings.

Respondent's actions, or lack thereof, demonstrate her repeated failure to cooperate in a timely manner with the Board's investigation.

Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code. § N 7.03(1)(g) by violating any term, provision, or condition of any order of the Board. Respondent was suspected of diverting narcotics and insulin from the Facility she was employed at, as a registered nurse, between February and March 2019. The Facility terminated her employment on March 5, 2019 and reported her termination to the Board pursuant to Board Order No. 0005980.

Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code § N 7.03(6)(a) by failing to perform nursing with reasonable skill and safety. Between the months of February and March 2019, Respondent was suspected of diverting narcotics and insulin from the facility she was employed at as a registered nurse. The Facility terminated her employment on March 5, 2019 and reported her termination to the Board pursuant to Board Order No. 0005980. The Facility's credible allegations of diversion in the instant case bear substantial similarity to Respondent's previous discipline and, as such, show a pattern of conduct.

Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code § N 7.03(6)(c) by departing from or failing to conform to the minimal standards of acceptable nursing practice that may create unnecessary risk or danger to a patient's life, health, or safety. Between the months of February and March 2019, Respondent was suspected of diverting narcotics and insulin from the facility she was employed as a registered nurse. The Facility terminated her employment on March 5, 2019 and reported her termination pursuant to Board Order No. 0005980. The Facility's credible allegations of diversion in the instant case bear substantial similarity to Respondent's previous discipline and as such, are sufficient to show a pattern of conduct.

Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code § N 7.03(8)(e) by obtaining and possessing narcotics and insulin without lawful authority. The Facility's credible allegations of diversion in the instant case bear substantial similarity to Respondent's previous discipline and as such, are sufficient to show a pattern of conduct.

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 and the deemed admission of all properly pled allegations, 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's licenses to practice professional and practical nursing in Wisconsin, along with her right to renew those licenses, be revoked. Given that Respondent has made no argument to the contrary, 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. 0005980, as the result of the following: Respondent failed to perform nursing with reasonable skill or safety in Division Case Nos. 17 NUR 146 and 17 NUR 418; Respondent departed from or failed to conform to the minimal standards of acceptable nursing practice; and Respondent obtained, possessed, or attempted to obtain or possess a drug without lawful authority. The discipline issued via Board Order No. 0005980 was severe and extensive in response to Respondent's violations of Wis. Stat. ch. 441 and Wis. Admin. Code ch. N 7. The cases at hand contain many similarities to 17 NUR 146 and 17 NUR 418. Board Order No. 0005980 has not deterred Respondent from continuing actions that present clear and substantial danger to the public. Although promoting rehabilitation is one of the purposes of discipline, rehabilitation of Respondent was not successful in the prior suspension order. The course of action needed 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 their 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 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)¹; *See In the Matter of Disciplinary Proceedings Against Rochelle A. Current, R.N.*,

¹ <https://online.drl.wi.gov/decisions/2019/ORDER0006273-00015692.pdf>

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)²; 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 violations of working as a nurse while suspended, and violated the terms of the Board order which ordered the suspension).³

Based upon the facts of this case, the factors set forth in *Aldrich*, and prior Board decisions, revocation of Respondent's Wisconsin registered nurse license and the right to renew that 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 146 and 17 NUR 418, the result of which was 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. Respondent is currently subject to a suspension and limitations via Board Order No. 0005980, significant discipline that Respondent ignored. These factors also warrant assessment of full costs.

² <https://online.dri.wi.gov/decisions/2019/ORDER0006238-00015576.pdf>

³ <https://online.dri.wi.gov/decisions/2019/ORDER0006271-00015690.pdf>

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 that the registered nurse license and practical nurse license of the Respondent (license nos. 226377-30 and 316658-31 respectively), and the right to renew such licenses, is REVOKED, effective on the date the final decision is signed by the Board.

IT IS FURTHER ORDERED that the 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 17th day of August, 2021.

STATE OF WISCONSIN
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By: _____


Angela Chaput Foy
Administrative Law Judge