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Before the
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against Ray D. Summar, R.N., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0007729**

Division of Legal Services and Compliance Case No. 21 NUR 206

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 9th day of December, 2021.

Gregory P. Jelatawski

Member
Board of Nursing



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings
Against Ray D. Summar, R.N., Respondent.

DHA Case No. SPS-21-0064
DLSC Case No. 21 NUR 206

PROPOSED DECISION AND ORDER

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

Ray D. Summar, R.N.
Milwaukee, WI 53202

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 Ray D. Summar, R.N. (Respondent), by the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), on August 12, 2021, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. An Answer to a Complaint was required to 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 September 13, 2021, at 11:00 a.m. The Notice sent to Respondent was returned by the U.S. Postal Service as undeliverable and unable to forward. At the prehearing conference held on Monday, September

13, 2021, Attorney Gretchen Mrozinski appeared by telephone on behalf of the Division. The ALJ attempted to contact the Respondent at a telephone number for Respondent provided by the Division. The ALJ was unable to reach Respondent at the telephone number provided. The ALJ also attempted to contact Respondent at an email address similarly provided by the Division and instructed him to contact the ALJ. However, as of the date of this Proposed Decision and Order, Respondent has not contacted the ALJ.

Based on Respondent's failure to file an Answer to the Complaint and failure to appear at 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 September 13, 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 October 14, 2021. The Division timely filed its submission.

PROPOSED FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-11 are taken from the Division's Complaint filed against Respondent in this matter.

1. Ray D. Summar, R.N. (Respondent), is licensed in the state of Wisconsin to practice as a registered nurse, having license number 232229-30, first issued on January 30, 2017, and current through February 28, 2022.

2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is Milwaukee, Wisconsin 53202.

3. On April 8, 2021, the Department was notified via the NURSUS database, that Respondent was reprimanded and assessed a fine by the Alabama Board of Nursing on January 18, 2019.

4. The Division of Legal Services and Compliance (DLSC) assigned case number 21 NUR 206 to the matter involving the Alabama Board of Nursing discipline (Alabama Discipline).

5. On April 12, 2021, the DLSC emailed Respondent at his email address on file with the Department (raysunmar@gmail.com), seeking a response to the Alabama Discipline. Respondent did not respond.

6. On April 20, 2021, the DLSC sent a second email request to Respondent's email address on file with the Department (raysunmar@gmail.com), seeking a response to the Alabama Discipline. Respondent did not respond.

7. On April 28, 2021, the DLSC mailed a letter to Respondent's address on file with the Department (1028 East Juneau Avenue, Room 430, Milwaukee, Wisconsin), seeking a response to the Alabama Discipline. Respondent did not respond.

8. On May 6, 2021, the DLSC case number 21 NUR 206 was opened for investigation.

9. On June 1, 2021, a DLSC investigator attempted to call Respondent at his phone number on file with the Department (205-821-0276) and received a message that it was not in service.

10. On June 2, 2021, the DLSC mailed letters to Respondent's addresses on file with the Alabama Board of Nursing (304 Westchester Avenue SW, Huntsville, Alabama) and with the Connecticut Board of Nursing (3434 Laurens Road, Apt 533, Greenville, South Carolina), seeking a response to the Alabama Discipline. The South Carolina letter was returned, stating it was undeliverable and unable to forward. Respondent did not respond to either letter.

11. On June 18, 2021, the DLSC mailed a certified letter to Respondent's address on file with the Department (1028 East Juneau Avenue, Room 430, Milwaukee, Wisconsin), seeking a response to the Alabama Discipline. The letter was returned, stating the address was vacant. Respondent did not respond.

Facts Related to Default

12. The Notice and Complaint were served on Respondent at his address of record with the Department on August 12, 2021, by both certified and regular mail.

13. Respondent failed to file an Answer to the Complaint within twenty days of having been served with the Complaint.

14. On September 1, 2021, the ALJ sent the parties Notice of Telephone Prehearing Conference, which was scheduled for September 13, 2021. The Notice instructed the Respondent to contact the ALJ with a telephone number at which Respondent could be reached for the conference no later than September 10, 2021. The Notice was returned by the U.S. Postal Service as undeliverable and unable to forward.

15. At the prehearing conference held on September 13, 2021, the ALJ was unable to reach the Respondent at a telephone number provided by the Division. On the same date, the ALJ also attempted to contact Respondent at an email address similarly provided by the Division and instructed him to contact the ALJ. However, as of the date of this Proposed Decision and Order, Respondent has not contacted the ALJ.

16. 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).

17. On September 13, 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 October 14, 2021.

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

DISCUSSION AND PROPOSED CONCLUSIONS OF LAW

Jurisdictional Authority

The Wisconsin Board of Nursing (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 his 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).

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.

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 September 13, 2021. Therefore, under Wis. Admin. Code § SPS 2.14, the Respondent is in default, and findings and an order may be entered 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) and (d), 440.20(5), and Wis. Admin. Code § N 7.03, provide the Board with grounds for taking disciplinary action. The latter provides grounds for taking disciplinary action on Respondent's license as follows:

- a. Wis. Admin. Code § N 7.03(1)(b). Having a license to practice nursing or a nurse licensure compact privilege to practice denied, revoked, suspended, limited, or having the credential holder otherwise disciplined in another state, territory, or country.
- b. Wis. Admin. Code § N 7.03(1)(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.

In addition to the above, Wis. Stat. § 440.20(5)(a) provides for discipline should a credential holder fail to respond, to the satisfaction of the Board, within 30 days to a request for information, in connection with an investigation of alleged misconduct of the credential holder.

Respondent engaged in conduct qualifying as grounds for taking disciplinary action on his license pursuant to Wis. Admin. Code § N 7.03(1)(b) by receiving a reprimand and being assessed a fine by the Alabama Board of Nursing on January 18, 2019. Respondent engaged in conduct qualifying as grounds for taking disciplinary action on his license pursuant to Wis. Admin. Code § 7.03(1)(c) and Wis. Stat. § 440.20(5)(a) by failing to cooperate in a timely manner with the Board's investigation. Respondent failed to reply to multiple requests for information from the Division in April and June 2021. 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.

By engaging in conduct qualifying as grounds for taking disciplinary action on his 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) and (d), 440.20(5)(a), 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).

Respondent was reprimanded and assessed a forfeiture by the Alabama Board of Nursing on January 18, 2019. The Division attempted on numerous occasions to solicit a response from Respondent concerning the Alabama Board of Nursing discipline. Respondent repeatedly refused to respond to the Division's request for information. Although the Division has not provided information concerning the underlying facts leading to the Alabama discipline, Respondent's refusal to cooperate with the Division (on behalf of the Board) is serious conduct in and of itself. The Board is charged with the duty of ensuring that nurses are capable of safely and competently practicing their professions of caring for vulnerable people. The Board cannot make such assurances to the public if nurses refuse to cooperate with the Board. A reprimand is necessary in

this case to promote public safety, rehabilitate Respondent, and deter others from committing acts that lead to discipline in other states as well as ignoring requests from the Board.

Respondent has failed to cooperate with the Board's investigation by failing to respond to multiple requests by email and regular mail from the Division. This lack of cooperation shows disregard for the Board's authority and impedes the Board's ability to thoroughly investigate allegations of misconduct. Requiring education on the Wisconsin nurse practice act and ethics will educate Respondent of the duties and obligations he has as a licensed registered nurse in Wisconsin. The Division requests that Respondent be reprimanded and ordered to complete four (4) hours of education. Because the recommended discipline is consistent with the direction and intent in *Aldrich*, I concur with the Division's request. In order to further promote rehabilitation, the discipline imposed against Respondent must include a requirement that he complete four (4) hours of education on the Wisconsin nurse practice act and ethics.

The recommended discipline is also consistent with past cases decided by the Board. *See In the Matter of Disciplinary Proceedings Against Tracy J. Burtis, R.N.*, Order No. 0005364 (July 13, 2017) (Nurse repeatedly failed to respond to requests for information from the Division; Board reprimanded the nurse, ordered four (4) hours of education on the nurse practice act, and imposed various other restrictions)¹; *See In the Matter of Disciplinary Proceedings Against Kevin J. Fitzgerald, R.N.*, Order No. 0005587 (January 11, 2018) (Nurse repeatedly failed to respond to requests for information from the Division; Board reprimanded the nurse and ordered three (3) hours of education on the topic of ethics)²; *See In the Matter of Disciplinary Proceedings Against Leah A. Stocks, R.N.*, Order No. 0007517 (August 12, 2021) (Nurse failed to timely report convictions to the Board and repeatedly failed to respond to requests for information from the Division; Board reprimanded the nurse and ordered three (3) hours of education on the Wisconsin nurse practice act; Board further ordered the suspension of the nurse's license should she fail to complete the education within 60 days)³; and *See In the Matter of Disciplinary Proceedings Against Gina M. Pups, R.N.*, Order 0007532 (August 12, 2021) (Nurse disciplined by NC Board of Nursing for ingesting a controlled substance without possessing a prescription; Wisconsin Board reprimanded nurse and ordered six (6) hours of education on professional/legal accountability and ethics)⁴.

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

¹ <https://online.drl.wi.gov/decisions/2017/ORDER0005364-00013889.pdf>

² <https://online.drl.wi.gov/decisions/2018/ORDER0005587-00014313.pdf>

³ <https://online.drl.wi.gov/decisions/2021/ORDER0007517-00018001.pdf>

⁴ <https://online.drl.wi.gov/decisions/2021/ORDER0007532-00018024.pdf>

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. The allegations involve charges of discipline against Respondent's nursing license from the Alabama Board of Nursing as well as repeatedly failing to respond and cooperate with the Division's investigation. The level of discipline sought is a reprimand and education—a 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 his 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 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 in Wisconsin (license no. 232229-30), as well as his privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact (Compact), are LIMITED as follows:
 - a. Within three (3) months of the date of this Order, Respondent shall at his own expense take and successfully complete four (4) hours of education on the topics of the Wisconsin nurse practice act and ethics as follows:
 - i. 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).

- ii. 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.
- iii. 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.

3. 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 or subsequent orders.

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

5. 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

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

6. In the event Respondent violates any term of this Order, Respondent's license (no. 232229-30), or Respondent's right to renew his 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 November 4, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Kristin P. Fredrick
Administrative Law Judge