

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before the  
State Of Wisconsin  
Board of Nursing

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In the Matter of the Disciplinary Proceedings  
Against Andrea L. Wilke, R.N., Respondent.

FINAL DECISION AND ORDER

**ORDER 0007773**

Order No. \_\_\_\_\_

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**Division of Legal Services and Compliance Case No. 20 NUR 096**

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 13th day of January, 2022.

*Gregory P. Jolietowski*

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Member  
Board of Nursing



Before The  
State of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

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In the Matter of Disciplinary Proceedings  
Against Andrea L. Wilke, R.N., Respondent.

DHA Case No. SPS-21-0058  
DLSC Case No. 20 NUR 096

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**PROPOSED DECISION AND ORDER**

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

Andrea L. Wilke, R.N.  
717 Heyden Lane  
Green Bay, WI 54301

Wisconsin Board of Nursing  
P.O. Box 8366  
Madison, WI 53708-8366

Department of Safety and Professional Services,  
Division of Legal Services and Compliance, by:

Attorney Julie Zimmer  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

PROCEDURAL HISTORY

On July 9, 2021, the Department of Safety and Professional Services, Division of Legal Services and Compliance (Department) filed and served the Notice of Hearing and Complaint in this matter on Respondent by sending a copy to her address on file with the Department via certified and regular first-class mail, pursuant to Wis. Admin. Code § SPS 2.08 and Wis. Stat. § 440.11(2).<sup>1</sup>

Following the expiration of the 20-day time period to file an answer, Administrative Law Judge Andrea Brauer scheduled a telephone prehearing conference for August 17, 2021. At this prehearing conference, Respondent requested additional time to file an answer. After no

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<sup>1</sup> The Department also emailed a copy to Respondent's email address on file with the Department.

objection from the Department, Respondent was granted an extension to September 17, 2021. Respondent did not file an answer.

The adjourned prehearing conference was rescheduled to September 27, 2021, at Respondent's request. At the adjourned prehearing conference before Administrative Law Judge Angela Chaput Foy (ALJ), the Department moved for default judgment. Respondent again requested additional time to file an answer and explained that her failure to file an answer thus far was due to her anxiety and debilitating depression. The ALJ granted the Department's motion for default in part but found, based on Respondent's explanation, that Respondent had good cause for failing to timely file an answer. The ALJ granted Respondent a second extension to file an answer to October 22, 2021. Respondent did not file an answer.

On October 25, 2021, the Department requested that default judgment be entered based on Respondent's failure to file an answer to the Complaint, pursuant to Wis. Admin. Code § SPS 2.14. On October 27, 2021, the ALJ issued a Notice of Default against Respondent and ordered the Department to file a recommended Proposed Decision and Order by November 26, 2021.

### FINDINGS OF FACT

#### Facts Related to the Alleged Violations

Finding of Fact 1-5 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Andrea L. Wilke, R.N., is licensed in the state of Wisconsin as a registered nurse, having license number 99100-30, first issued on April 1, 1988.

2. Respondent's most recent address on file with the Department is 717 Heyden Lane, Green Bay, Wisconsin 54301.

3. Respondent's license expired on February 28, 2018, and was not renewed until April 15, 2020. Respondent's license is current through February 28, 2022.

4. Between May 6, 2019, and February 14, 2020, Respondent practiced as a registered nurse at a hospital located in Green Bay, Wisconsin (Hospital) without an active license.

5. On February 21, 2020, the Hospital terminated Respondent's employment after discovering she had been practicing as a registered nurse without an active license.

#### Facts Related to Default

6. On July 9, 2021, the Department served the Notice of Hearing and Complaint on Respondent at her last known address on file with the Department by both certified and regular first-class mail, pursuant to Wis. Admin. Code § SPS 2.08 and Wis. Stat. § 440.11(2).

7. On July 19, 2021, the U.S. Postal Service returned the signed certified mail receipt to the Department indicating the Notice of Hearing and Complaint were delivered to Respondent on July 12, 2021.

8. Respondent failed to file an answer to the Complaint.

9. At the telephone prehearing conference on August 17, 2021, Respondent requested additional time to file an answer. After no objection from the Department, Administrative Law Judge Andrea Brauer granted an extension to September 17, 2021.

10. Respondent did not file an answer by the extended deadline.

11. On September 27, 2021, an adjourned prehearing conference was held with Administrative Law Judge Angela Chaput Foy (ALJ). The Department moved for default judgment based on Respondent's failure to file an answer, pursuant to Wis. Admin. Code § SPS 2.14. Respondent requested additional time to file an answer and explained that her failure to file an answer was due to her anxiety and debilitating depression. The ALJ granted the Department's motion for default in part but found, based on Respondent's explanation, that Respondent had good cause for failing to timely file an answer. The ALJ granted Respondent a second extension to file an answer to October 22, 2021.

12. Respondent did not file an answer by the second extended deadline.

13. On October 25, 2021, the Department requested that default judgment be entered based on Respondent's failure to file an answer to the Complaint, pursuant to Wis. Admin. Code § SPS 2.14.

14. On October 27, 2021, the ALJ issued a Notice of Default against Respondent and ordered the Department to file a recommended Proposed Decision and Order by November 26, 2021.

15. The Department timely filed its recommended Proposed Decision and Order.

## DISCUSSION

### Jurisdictional Authority

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). The Board has the authority to impose discipline against the Respondent pursuant to Wis. Stat. § 441.07(1g).

### Default

The Division properly served the Notice of Hearing and Complaint upon Respondent by mailing copies to her at her last known address. Wis. Stat. § 440.11(2). Service by mail is complete upon mailing. Wis. Admin. Code § SPS 2.08(1).

An answer to a complaint shall be filed within 20 days from the date of service of the complaint. Wis. Admin. Code § 2.09(4). If a respondent “fails to answer as required by s. SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence.” Wis. Admin. Code § SPS 2.14.

Here, Respondent failed to file an answer to the Complaint within 20 days from the date of service, or by the two extended deadlines granted to her. Therefore, Respondent is in default and findings may be made, and an order may be entered based on the Complaint.

### Violation

Following an investigation and disciplinary hearing, 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, or suspend her license, or reprimand her. Wis. Stat. § 441.07(1g)(b) and (d), respectively.

Conduct that is grounds for the Department to take disciplinary action includes but is not limited to practicing without an active license. Wis. Admin. Code § N 7.03(1)(d).

Respondent violated Wis. Admin. Code § N 7.03(1)(d) by practicing as a registered nurse at a Green Bay hospital between May 6, 2019, and February 14, 2020, without an active license. Respondent’s license had expired on February 28, 2018, and was not renewed until April 15, 2020. On February 21, 2020, Respondent’s employment was terminated at the hospital after the hospital discovered her license was not active.

By her actions, Respondent has committed grounds for discipline pursuant to Wisconsin Administrative Code § N 7.03 and is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (d).

### Discipline

The Division recommends that the Board of Nursing reprimand Respondent.

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 recommended discipline is consistent with the purposes articulated in *Aldrich*. The uncontroverted allegations in the Complaint indicate Respondent practiced nursing at a Wisconsin hospital without an active license and potentially endangered the public. "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). Respondent was responsible for maintaining an active nursing license before engaging in the practice of nursing in Wisconsin, and she failed to do that. Regardless of whether Respondent mistakenly thought her license was active or whether the hospital hired her without confirming her license was active, Respondent was the credential holder and should have made sure her license was active before practicing nursing.

Reprimanding Respondent will remind her, and other credential holders, of the duty to abide by Wisconsin licensing laws and the Board's rules of professional conduct, to confirm her license status before engaging in the practice of nursing, and send a message to Respondent that her actions and omissions have serious consequences for her licensure. Imposing anything less than a reprimand would not deter other credential holders from engaging in similar conduct and could imply that such conduct by a licensee is tolerable.

The Board has taken harsher actions against nurses who practice without an active license; however, in those cases, the credential holders were under prior suspension orders when they engaged in the practice of nursing. In *In the Matter of Disciplinary Proceedings Against Sonja D. Easley, R.N.*, Order Number 0005545 (December 14, 2017),<sup>2</sup> a nurse had a multistate license issued by the state of Kentucky under the Nurse Licensure Compact with privileges to practice in Wisconsin. The Kentucky Board of Nursing temporarily suspended her license for failure to respond to its requests. Shortly thereafter, she began a nursing engagement in Wisconsin. She claimed she was not aware that her Kentucky license had been suspended and practiced nursing in Wisconsin without an active license for three months. The Board suspended her license for three months after which she could petition for a stay with proof she completed two hours of education on the nurse practice act. In *In the Matter of Disciplinary Proceedings Against Christy M. Pullara, R.N.*, Order Number 0004650 (April 14, 2016),<sup>3</sup> a nurse practiced nursing for five weeks after her license was suspended by the Board for noncompliance with a prior Board Order. The Board suspended her license for 30 days.

Here, Respondent failed to complete the license renewal process before accepting a nursing job at a hospital in Green Bay. She was not under a prior Board order suspending her license. Reprimanding Respondent under these circumstances is appropriate and effectuates the purposes of discipline articulated in *Aldrich*.

Based upon the facts of this case and the factors set forth in *Aldrich*, the discipline recommended by the Department, pursuant to the terms and conditions of the Order below, is reasonable and warranted.

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<sup>2</sup> This decision is available online at: <https://online.drl.wi.gov/decisions/2017/ORDER0005545-00014225.pdf>.

<sup>3</sup> This decision is available online at: <https://online.drl.wi.gov/decisions/2016/ORDER0004650-00012560.pdf>.

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 of this proceeding. Respondent failed to file an answer to the Complaint, and she was found to be in default. Respondent has not presented any evidence in her defense or otherwise provided any argument regarding the allegations brought against her, and the facts in the Complaint were deemed admitted.

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

ORDER

For the reasons set forth above, IT IS ORDERED that Respondent is REPRIMANDED.

IT IS FURTHER ORDERED that Respondent pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to the address below:

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](mailto:DSPSMonitoring@wisconsin.gov)



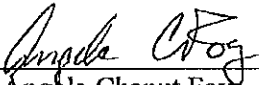
Respondent may also submit this information online at: <https://dspsmonitoring.wi.gov>.

IT IS FURTHER ORDERED that in the event Respondent violates any term of this Order, Respondent's license (number 99100-30), 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 this Order. The Board may, in addition and/or in the alternative, refer any violation of this Order to the Department's Division of Legal Services and Compliance for further investigation and action.

IT IS FURTHER ORDERED that the terms of the Order are effective the date the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin, on November 30, 2021.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
4822 Madison Yards Way, 5<sup>th</sup> Floor North  
Madison, Wisconsin 53705  
Tel. (608) 266-7709  
Email: Angela.ChaputFoy@wisconsin.gov

By:   
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Angela Chaput Foy  
Administrative Law Judge