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Before the
State Of Wisconsin
Board of Nursing

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

FINAL DECISION AND ORDER

Order No. **ORDER 0007878**

Division of Legal Services and Compliance Case No. 21 NUR 194

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 10th day of March, 2022.

A handwritten signature in black ink, consisting of several stylized, overlapping loops and lines.

Member
Board of Nursing



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

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

DHA Case No. SPS-21-0078
DLSC Case No. 21 NUR 194

PROPOSED DECISION AND ORDER

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

Amanda G. Dryer, R.N.

Rochester, MN 55902

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 Nicholas Dalla Santa
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

On October 6, 2021, the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), served the Notice of Hearing and the Complaint in this matter on Amanda Dryer (Respondent) by sending copies to her address on file with the Department via both certified and regular mail, pursuant to Wis. Admin. Code § SPS 2.08 and Wis. Stat. § 440.11(2). The Respondent failed to file an answer to the Complaint as required. Wis. Admin. Code § SPS 2.09(4).

Following the expiration of the 20-day period to file an answer, Administrative Law Judge Angela Chaput Foy (ALJ) scheduled a telephone prehearing conference for November 10, 2021, at 10:00 a.m. The Respondent did not appear.

On November 10, 2021, the Division moved for default based on the Respondent's failure to file an answer to the Complaint and failure to appear at the prehearing conference, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

On November 11, 2021, the ALJ issued a Notice of Default and Order against the Respondent and ordered the Division to file a recommended proposed decision and order by December 13, 2021.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-14 are taken from the Complaint filed against Respondent in this matter.

1. Respondent Amanda G. Dryer, R.N., (Date of Birth: January 3, 1980) is licensed in the state of Wisconsin as a registered nurse, having license number 244466-30, first issued on October 29, 2018. This license expired on February 29, 2020 and has not been renewed. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew upon payment of a fee until February 28, 2025.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is Minnesota 55902.

3. Respondent is subject to an Order by the Minnesota Board of Nursing (Minnesota Order).

4. The Minnesota Order included findings that Respondent tested positive for alcohol while working at a hospital in Rochester, Minnesota, was diagnosed with a severe alcohol disorder, failed to comply with Minnesota's Health Professional Services Program (HPSP), and failed to respond to the Minnesota Board of Nursing's numerous attempts to contact her following Respondent's withdrawal from HPSP.

5. The Minnesota Order suspended Respondent's Minnesota nursing license as of December 16, 2020 and placed limitations on her ability to reinstate her license.

6. Respondent is subject to an Order by the State of Washington Department of Health (Washington Order).

7. The Washington Order summarily suspended Respondent's Washington nursing license as of March 26, 2021 and placed limitations on her ability to reinstate her license. The basis for the summary suspension was that Respondent's Minnesota nursing license was suspended due to the Minnesota Order.

8. On April 8, 2021, the Department opened this case for investigation.

9. On May 17, 2021, the Department sent a request for information to Respondent via mail to _____, the current address listed for Respondent in LexisNexis. The Department did not receive a response.

10. On June 1, 2021, the Department sent a request for response via e-mail to Respondent's e-mail address on file with the Department. The Department did not receive a response.

11. On June 9, 2021, the Department sent a request for information to Respondent via certified mail to Respondent's Seattle address. This request was confirmed received by an agent for Respondent on June 12, 2021. The Department did not receive a response.

12. On June 24, 2021, the Department sent a request for information via certified mail to Respondent's address on file with the Department. This request was returned to the Department as unclaimed on August 11, 2021.

13. On July 9, 2021, the Department called Respondent's phone number on file with the Department and reached a voicemail box for "Mandy." The voicemail box was full and was not accepting further messages.

14. On July 13, 2021, the Department called Respondent's phone number on file with the Department a second time and left a voicemail requesting Respondent provide her current contact information. The Department did not receive a response.

Facts Related to Default

15. On October 6, 2021, the Department served the Notice and Complaint on the Respondent at her last known address on file with the Department by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08.

16. The Respondent failed to file an answer to the Complaint.

17. Following the expiration of the 20-day period to file an answer, the ALJ scheduled a telephone prehearing conference for November 10, 2021. On October 27, 2021, the ALJ mailed notice of this prehearing conference to both parties with instructions that the Respondent contact the ALJ with a telephone number at which she could be reached for the conference no later than November 9, 2021. The Respondent did not contact the ALJ nor provide a current telephone number. The notice also stated that if the Respondent failed to appear at the scheduled conference, default judgment may be entered against her.

18. The Respondent did not contact the ALJ and did not provide a telephone number.

19. On November 10, 2021, the Respondent failed to appear at the prehearing conference. The ALJ attempted to reach the Respondent at the number that she had on file with the Department. The ALJ called the Respondent at approximately 10:01 a.m. The recorded message identified the number as "Mandy's," but the mailbox was full and could not accept additional messages. The ALJ attempted to call two more times at 10:04 a.m. and 10:20 a.m.,

but Respondent did not answer. The ALJ also emailed the Respondent at 10:04 a.m. via the email address on file with the Department. The Respondent did not respond.

20. On November 10, 2021, the Division moved for default based on the Respondent's failure to file an answer to the Complaint and failure to appear for the prehearing conference pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

21. On November 11, 2021, the ALJ issued a Notice of Default against the Respondent and ordered the Division to file and serve a recommended Proposed Decision and Order no later than December 13, 2021.

22. The Division timely filed its recommended Proposed Decision and Order.

DISCUSSION AND CONCLUSIONS OF LAW

Jurisdictional Authority

The Wisconsin Board of Nursing (Board) has jurisdiction over this matter pursuant to Wis. Stat. § 441.07(1c). 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." Wis. Stat. § 440.03(1). These rules are codified in Chapter SPS 2 of the Wisconsin Administrative Code.

The Division of Hearings and Appeals has authority to issue this proposed decision and order pursuant to Wis. Stat. § 227.43(1m) and Wis. Admin. Code § SPS 2.10(2).

Default

The Division properly served the Notice and Complaint upon the Respondent by mailing a copy 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).

The Division of Hearings and Appeals properly served the Respondent with its notices pursuant to Wis. Admin. Code § HA 1.03 (The division may serve decisions, orders, notices, and other documents by first class mail.).

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 § 2.14.

For a telephone prehearing conference, the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes

after the scheduled time for prehearing conference: (1) the failure to provide a telephone number to the ALJ after it had been requested; (2) the failure to answer the telephone; (3) the failure to free the line for the proceeding; and (4) the failure to be ready to proceed with the prehearing conference as scheduled. Wis. Admin. Code § HA 1.07(3)(c).

Here, the Respondent failed to file an answer to the Complaint, failed to appear at the prehearing conference on November 10, 2021, failed to provide a telephone number to the ALJ after it had been requested, failed to answer the telephone when the ALJ called, and failed to be ready to proceed with the prehearing conference as scheduled. Therefore, the Respondent is in default and findings and an order may be entered based on the Complaint.

Violations

The Board has the authority to impose discipline against the Respondent. 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,” has committed “[a]cts which show the registered nurse . . . to be unfit or incompetent by reason of . . . abuse of alcohol or other drugs . . .,” 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), (c), and (d).

Conduct that is grounds for the Department to take disciplinary action includes, but is not limited to:

- a. Noncompliance with federal, jurisdictional, or reporting requirements by having a license to practice nursing or a nurse licensure compact privilege to practice denied, revoked, suspended, limited, or otherwise disciplined in another state, territory, or country. Wis. Admin. Code § N 7.03(1)(b).
- b. 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).
- c. Failing to respond to a request for information to the Board or Department within 30 days. Wis. Stat. § 440.20(5)(a).
- d. Unsafe practice or substandard care including the inability to practice safely by reason of alcohol or other substance abuse. Wis. Admin. Code § N 7.03(6)(f).

The Respondent violated Wis. Admin. Code § N 7.03(1)(b) by having her license to practice nursing or a nurse licensure compact privilege to practice denied, revoked, suspended, limited, or otherwise disciplined in another state. On December 16, 2020, the Minnesota Board of Nursing (Minnesota Board) suspended the Respondent’s nursing license and placed limitations on her ability to reinstate her license based on the fact that the Respondent was diagnosed with a severe alcohol disorder, failed to comply with Minnesota’s Health Professional Services Program (HPSP), and failed to respond to the Minnesota Board of Nursing’s numerous attempts to contact her following her withdrawal from HPSP. Subsequently, the Respondent was subject to an Order by the State of Washington Department of Health (Washington Order). On March 26, 2021, the Washington Order summarily suspended and placed limitations on her

ability to reinstate her Washington nursing license based on the suspension of the Respondent's nursing license in the Minnesota Board Order.

The Respondent violated Wis. Admin. Code § N 7.03(1)(c) and Wis. Stat. § 440.20(5)(a) by failing to cooperate in a timely manner with the Board's investigation and failing to respond to a request for information from the Department or Board in connection with an investigation of alleged misconduct within 30 days. In May and June 2021, the Department sent requests for information to the Respondent via regular and certified mail at the current mailing address for the Respondent located on a public records website. On June 1, 2021, the Department sent a request for information to the Respondent's email address on file with the Department. On June 24, 2021, the Department sent a request for information via certified mail to the Respondent's mailing address on file with the Department. On two occasions in July 2021, the Department telephoned the Respondent, using the telephone number on file with the Department, and left a voicemail message. The Respondent failed to respond to all of these requests from the Department for information related to the allegations of misconduct in the Complaint. In addition, the Respondent failed to file an answer and participate in these proceedings. The Respondent's actions, or lack thereof, demonstrate her repeated failure to cooperate in a timely manner with the Board's investigation.

The Respondent violated Wis. Admin. Code § N 7.03(6)(f) by being unable to practice safely by reason of alcohol or other substance abuse. While working at a hospital in Rochester, Minnesota, the Respondent tested positive for alcohol and was subsequently diagnosed with a severe alcohol disorder, according to the Minnesota Order. The Respondent failed to comply with HPSP and did not respond to the Minnesota Board's numerous attempts to contact her after her withdrawal from HPSP. Thus, the Respondent's severe alcohol disorder remains untreated, and she thus poses a safety risk in any nursing setting.

By engaging in conduct that is grounds for taking disciplinary action against her license, along with her failure to participate in these proceedings and make any argument to the contrary, the 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 Division recommends that the Respondent's license to practice as a registered nurse in Wisconsin, and her right to renew her license, be suspended indefinitely. Because the Respondent has been found in default for her failure to participate in any part of these proceedings, and because the recommended discipline is consistent with the purposes articulated in *Aldrich*, I adopt the Division's recommendation.

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 Respondent's rehabilitation may be possible, but this can only be determined if the Respondent cooperates with the Board. The Department's recommendation accounts for this by allowing the Respondent to petition the Board to stay the suspension once the Respondent provides information requested by the Department in relation to this matter.¹ Depending on the information provided, the Board may grant the petition to stay the suspension and impose conditions on the Respondent's license that promote rehabilitation, such as participating in alcohol and other drug abuse (AODA) treatment and/or a drug and alcohol monitoring program.

The recommended discipline also 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). The Respondent's Minnesota and Washington nursing licenses have already been suspended with limitations on reinstatement of those licenses due to a severe alcohol disorder and an inability to comply with treatment requirement. The Respondent then failed to respond to multiple Department requests for information on behalf of the Board, making it impossible for the Board to ensure the Respondent is safely practicing nursing. As such, an indefinite suspension is appropriate to protect the public.

The recommended discipline also deters other nurses licensed in Wisconsin from engaging in similar conduct. Licensees should be on notice that they cannot avoid disciplinary action by simply refusing to cooperate with the Board. Suspension of the Respondent's license will serve to deter others from committing similar violations.

The recommended discipline is consistent with Board precedent. *See In the Matter of the Disciplinary Proceedings Against Linda L. Polanco, R.N.*, Order Number 0007563 (August 25, 2021) (Board suspended respondent's license indefinitely for failing to cooperate with the Board's investigation and proceedings and required completion of education in order to petition for license reinstatement);² *In the Matter of the Disciplinary Proceedings Against Amanda Nabbefeldt, R.N.*, Order Number 0007516 (August 12, 2021) (Board suspended respondent's license indefinitely for failing to cooperate with the Board's investigation and proceedings);³ *In the Matter of the Disciplinary Proceedings Against Philip M. Lemon, Sr., L.P.N.*, Order No. 0007411 (June 10, 2021) (Nurse was unable to practice safely due to alcohol or substance use, nurse failed to respond to Division requests for information, and nurse failed to appear for hearing proceedings; nurse's license and right to renew such license revoked);⁴ *In the Matter of the Disciplinary Proceedings Against Jessica A. Lunde, R.N.*, Order No. 0007216 (February 11, 2021) (Right to renew license was revoked after nurse's MN license was suspended, nurse did

¹ Department investigations involving alcohol impairment include, among other things, questions concerning a respondent's prior and current drug and alcohol use, if any AODA assessments have been completed, prior instances of impairment, and current employment status and job duties.

² *In the Matter of the Disciplinary Proceedings Against Linda L. Polanco, R.N.*, Order Number 0007563

³ *In the Matter of the Disciplinary Proceedings Against Amanda Nabbefeldt, R.N.*, Order Number 0007516

⁴ *In the Matter of the Disciplinary Proceedings Against Philip M. Lemon, Sr., L.P.N.*, Order No. 0007411

not disclose suspension on application for licensure in Wisconsin, and nurse failed to respond to requests for information).⁵

Based upon the facts of this case, the factors set forth in *Aldrich*, and prior Board decisions, the discipline recommended by the Department is warranted.

Costs

The Board has discretion to assess all or part of the costs of this proceeding against the 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 the Respondent to pay the full costs of the investigation and these proceedings. The Respondent defaulted and the factual allegations identified in the Complaint were deemed admitted. The Respondent’s misconduct involves alcohol impairment while working as a nurse, and a subsequent withdrawal from monitoring and treatment related to a severe alcohol use disorder. The misconduct also involves a serious charge of failure to cooperate with the Board’s investigation, a violation that represents a clear disregard for the Board’s authority. The level of discipline sought is an indefinite suspension, which is a proportionate and substantial level of discipline in response to the violations in this matter. The Respondent’s license to practice nursing has been suspended in two other states due to her impairment issues. The Respondent failed to cooperate with the Division’s investigation and the 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. The Respondent has not offered any acceptable justifications for her actions. Such conduct demonstrates disregard for the authority of the Board and disregard for her duties as a nurse.

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.

⁵ *In the Matter of the Disciplinary Proceedings Against Jessica A. Lumde, R.N.*, Order No. 0007216

Therefore, it is appropriate for the 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. The Respondent's license to practice as a registered nurse in Wisconsin (license no. 244466-30), and Respondent's right to renew her license, are SUSPENDED for an indefinite period.

2. The Respondent may petition the Board for a STAY of the suspension by contacting the Department Monitor and providing any information requested by the Board or its designee in relation to this matter in a timely fashion.

3. The Board or its designee may stay the suspension upon determination that the Respondent has cooperated fully with the Department and provided any information requested by the Board or Department in relation to this matter. The Board or its designee may impose any conditions and/or limitations on Respondent's license that it deems appropriate to protect the health, safety, and welfare of patients and the public.

4. Whether the Board or its designee grants the Respondent's petition for a stay of suspension, and/or imposes any conditions and limitations on the Respondent's license is within its sole discretion and is not subject to appeal.

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

6. 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

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

7. The terms of this Order are effective on the date the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin, on January 19, 2022.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Angela Chaput Foy
Administrative Law Judge