## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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In the Matter of the Disciplinary Proceedings Against Nancy M. Mokaya, R.N., Respondent.

FINAL DECISION AND ORDER ORDER 00080 13

## Division of Legal Services and Compliance Case No. 21 NUR 212

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 2th day of June

**Board of Nursing** 



## State of Wisconsin DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings Against Nancy M. Mokaya, R.N., Respondent.

DHA Case No. SPS-22-0007 DLSC Case No. 21 NUR 212

#### NOTICE OF FILING PROPOSED DECISION AND ORDER

TO: Nancy M. Mokaya 527 13th St. S., Apt. 3 Hudson, WI 54016

> Nancy M. Mokaya, R.N. 1445 Minnehaha Ave. E., Apt. 2 St. Paul, MN 55106

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

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Board of Nursing by Administrative Law Judge Andrea Brauer. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. If your objections or argument relate to evidence in the record, please cite the specific exhibit and page number in the record.

Your objections and argument must be received at:

Department of Safety and Professional Services Division of Policy Development Wisconsin Board of Nursing P.O. Box 8366 Madison, WI 53707-8366

on or before May 23, 2022. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received by the Board of Nursing no later than seven business days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, the Board of Nursing will issue a binding Final Decision and Order.

Dated at Milwaukee, Wisconsin on May 5, 2022.

STATE OF WISCONSIN DIVISION OF HEARINGS AND APPEALS 4822 Madison Yards Way, 5th Floor North Madison, Wisconsin 53705 Telephone: (414) 227-4027

FAX:

(608) 264-9885

By: Andrea Brauer, Administrative Law Judge



# State of Wisconsin DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against Nancy M. Mokaya, R.N., Respondent. DHA Case No. SPS-22-0007 DLSC Case No. 21 NUR 212

#### PROPOSED DECISION AND ORDER

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

Nancy M. Mokaya, R.N. 527 13<sup>th</sup> Street S., Apt. 3 Hudson, WI 54016

Nancy M. Mokaya, R.N. 1445 Minnehaha Ave. E., Apt. 2 St. Paul, MN 55106

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 January 25, 2022, 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 the Respondent Nancy M. Mokaya, R.N., by mailing copies to her address on file with the Department via both certified and regular mail, pursuant to Wis. Stat. § 440.11(2) and Wis. Admin. Code § SPS 2.08. The Respondent failed to file an Answer to the Complaint as required by Wis Admin. Code § 2.09(4).

Following expiration of the 20-day period to file an Answer, the undersigned Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for March 3, 2022. At the Division's request, the telephone conference was subsequently rescheduled for March 4, 2022, at 10:30 a.m. The Respondent did not appear.

On March 8, 2022, the ALJ issued a Notice of Default and Order, finding the Respondent in default and ordering the Division to file a recommended Proposed Decision and Order by April 4, 2022. 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 Respondent in this matter.

- 1. Respondent Nancy M. Mokaya, R.N. (DOB: 09/23/1982) is licensed in the state of Wisconsin as a registered nurse with multistate privileges pursuant to the Enhanced Nurse Licensure Compact (Compact), having license number 225499-30, first issued on October 8, 2015, 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 in Hudson, Wisconsin 54016.
- 3. At all times relevant to these proceedings, Respondent was also licensed as a registered nurse in Minnesota (license number 2010483).
- 4. On June 4, 2020, The Minnesota Board of Nursing (Minnesota Board) entered an Order against Respondent's Minnesota license (June Order) based on findings that Respondent committed documentation and medication errors while working as a registered nurse.
- 5. The June Order imposed and stayed a suspension and placed limitations and conditions on Respondent's Minnesota license.
- 6. The limitations included prohibition from working in a home care setting, completion of continuing education related to documentation and medication errors, and supervision by a registered nurse.
- 7. On October 20, 2020, the Minnesota Board entered an Order that removed the stay of suspension due to Respondent failing to comply with the June Order.
- 8. On December 16, 2020, the Minnesota Board entered a Final Order that found Respondent had violated the conditions of the June Order by working in a home care setting without supervision, and that Respondent failed to attend a conference with the Minnesota Board related to its investigation.

- 9. The Final Order suspended Respondent's Minnesota License indefinitely, with the ability to apply for a stay of suspension after 24 months and upon meeting additional conditions.
- 10. On April 13, 2021, the Department, while investigating this case on behalf of the Board of Nursing (Board), e-mailed a request for information related to the suspension to Respondent's e-mail address on file with the Department. Respondent failed to respond.
- 11. On April 20, 2021, the Department e-mailed a second request for information to Respondent's e-mail address on file with the Department. Respondent failed to respond.
- 12. On April 29, 2021, the Department mailed a third request for information to Respondent's mailing address on file with the Department. Respondent failed to respond.
- 13. On July 27, 2021, the Department mailed an additional request for information to Respondent's address listed in a Lexis Nexis report, in Saint Paul, Minnesota. Respondent provided a response the next day via Respondent's e-mail address on file with the Department.

## Facts Related to Default

- 14. On January 25, 2022, the Division served the Notice of Hearing and Complaint on Respondent at both of her addresses, as indicated in the Division's Complaint and Notice of Hearing, by both certified and regular mail.
  - 15. Respondent did not file an Answer to the Complaint.
- 16. Following the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for March 3, 2022. At the Division's request, the telephone prehearing conference was subsequently rescheduled for March 4, 2022, at 10:30 a.m.
- 17. Notice of the rescheduled prehearing conference was sent to both parties via regular mail, consistent with Wis. Admin. Code § HA 1.03. Respondent's Notice was sent to both of her addresses as indicated in the Division's Complaint and Notice of Hearing. The rescheduled prehearing conference Notice also instructed Respondent to contact the ALJ with a telephone number at which Respondent could be reached for the conference no later than March 3, 2022. Respondent did not contact the ALJ.
- 18. At the prehearing conference held on March 4, 2022, the ALJ attempted to reach Respondent at her telephone number on file with the Division. Respondent did not answer the telephone. The ALJ left the line open for more than 10 minutes, consistent with Wis. Admin. Code § HA 1.07(3)(c). The Respondent did not return the ALJ's phone call and has not otherwise contacted the ALJ.
- 19. The Division moved for default judgment based on Respondent's failure to answer the Complaint and failure to appear for the prehearing conference pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

- 20. On March 8, 2022, the ALJ issued a Notice of Default and Order, finding the Respondent in default and ordering the Division to file and serve a recommended proposed decision and order no later than April 4, 2022.
  - 21. The Division timely filed its recommended proposed decision and order.

#### DISCUSSION

## Jurisdiction

The Wisconsin Board of Nursing (Board) has jurisdiction over this matter pursuant to Wis. Stat. § 441.07(1c) and (1g). 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 Wis. Admin. Code ch. SPS 2.

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

Although Respondent's license expired on February 28, 2022, the Board retains authority in this matter because Respondent has a right to renew her license within five years of expiration. Wis. Stat. § 440.08(3). Through February 27, 2027, she may apply for renewal by completing the nursing workforce survey and paying the following fees: a renewal fee, a late fee, and a nursing workforce survey fee. Wis. Admin. Code § N 2.40(2). After five years, to qualify for renewal, she must also either complete a nursing refresher course or provide documentation of employment requiring a nursing license within the prior five years. Wis. Admin. Code § N 2.40(3). In addition, pursuant to Wis. Admin. Code § N 2.41, if a license is expired for more than five years and the licensee has unmet disciplinary requirements, the license may not be reinstated unless the licensee shows evidence of completion of the disciplinary requirements and evidence of rehabilitation or change in circumstances warranting reinstatement.

#### Default

The Division properly served the Notice of Hearing 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) and Wis. Stat. § 440.11(2). The Division of Hearings and Appeals also properly served the Respondent with the Notice of Prehearing Conference by mailing it to her address of record with the Department. Wis. Admin. Code § HA 1.03.

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 ALJ may find a failure to appear grounds for default if any of the following conditions exist for more than 10 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 telephone conferenced scheduled for March 4, 2022, 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, Respondent is in default, and findings and an order may be entered based on the Complaint.

#### <u>Violations</u>

The Board has the authority to discipline 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 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).

The Board's rules further specify that the following conduct is grounds for disciplinary action:

- a. 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. Wis. Admin. Code § N 7.03(1)(b).
- b. 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. Wis. Admin. Code § N 7.03(1)(c).

Respondent engaged in conduct, which constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(1)(b), by having her license to practice nursing or a nurse licensure compact privilege to practice limited and suspended in another state. On June 4, 2020, the Minnesota Board limited Respondent's nursing license upon a finding that Respondent committed medication and documentation errors while practicing as a registered nurse. On October 20, 2020, the Minnesota Board suspended Respondent's nursing license for failing to comply with the limitations imposed. On December 16, 2020, the Minnesota Board suspended Respondent's license indefinitely after Respondent worked in a home setting without supervision contrary to the previously imposed limitations, and failed to attend a conference with the Minnesota Board related to its investigation.

Respondent also engaged in conduct, which constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(1)(c), by failing to cooperate in a timely manner with the Board's investigation. Respondent failed to respond to any of the Division's attempts to contact her during the Division's investigation of this case. In addition, Respondent failed to appear and

participate in these proceedings. Respondent's actions, or lack thereof, demonstrate a 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 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) and (d), and Wis. Admin. Code § N 7.03.

#### Discipline

The Division recommends that Respondent's license to practice as a registered nurse in Wisconsin, Respondent's right to renew her license, and any privilege she may have to practice in Wisconsin pursuant to a multistate license, be suspended indefinitely. The Respondent may petition the Board at any time for a stay of the suspension provided. If the Board chooses to stay the suspension, it may also impose conditions or limitations on the Respondent's license that it deems appropriate to protect the health, safety, and welfare of patients and the public provided they are related to the misconduct proven in this matter and serve the three purposes of discipline as outlined in *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976). As identified in the Order below, I adopt the Department'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. *Id*.

In this case, Respondent's Minnesota license was suspended after she failed to comply with limitations imposed after she committed medication and documentation errors. While Respondent's rehabilitation<sup>1</sup> may be possible, this can only be determined if the Respondent cooperates with the Board's investigation. The Division'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 the matter.<sup>2</sup> 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 providing verification that Respondent has completed relevant education or holds a full and unencumbered Minnesota nursing license.

The Division's recommended discipline also protects the public from other potential instances of misconduct by ensuring that the Board can adequately monitor Respondent's conduct in the future. "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, Wisconsin 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

<sup>&</sup>lt;sup>1</sup> In this case, "rehabilitation" relates to ensuring Respondent no longer commits medication or documentation errors.

<sup>&</sup>lt;sup>2</sup> Department investigations involving out-of-state license suspensions include, among other things, questions concerning a respondent's efforts to reinstate the license, whether a respondent plans to practice nursing in Wisconsin in the future, and whether a respondent has completed any education related to the circumstances that led to the suspension.

competence to practice the profession, then suspension is appropriate. Gilbert v. State Medical Examining Bd., 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984). The Respondent's Minnesota license was suspended after the Respondent committed medication and documentation errors and subsequently violated a Minnesota Board order to refrain from working in a home care setting. She has since failed to communicate with the Department despite multiple requests for information, it has not been possible to ensure that Respondent is safely practicing nursing. As such, an indefinite suspension is appropriate to protect the public.

The recommended discipline also deters other credential holders 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, and her right to apply for renewal of that 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); 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); In the Matter of the Disciplinary Proceedings Against Laurie A. Pickard, R.N., Order No. 0007527 (August 12, 2021) (Board suspended Respondent's license indefinitely after her Texas license status was changed to "inactive" for failing to complete remedial education ordered for failure to appropriately monitor and intervene in her patient's care); 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 Minnesota license was suspended, nurse did not disclose suspension on application for licensure in Wisconsin, and nurse failed to respond to requests for information).

Based upon the facts of this case, the factors set forth in *Aldrich*, and prior Board decisions, an indefinite suspension of Respondent's license, and the right to renew such license, pursuant to the terms and conditions of the Order below, 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. 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

<sup>&</sup>lt;sup>3</sup> In the Matter of the Disciplinary Proceedings Against Linda L. Polanco, R.N., Order Number 0007563

<sup>&</sup>lt;sup>4</sup> In the Matter of the Disciplinary Proceedings Against Amanda Nabbefeldt, R.N., Order Number 0007516

<sup>&</sup>lt;sup>5</sup> In the Matter of the Disciplinary Proceedings Against Laurie A. Pickard, R.N., Order Number 0007527

<sup>&</sup>lt;sup>6</sup> In the Matter of the Disciplinary Proceedings Against Jessica A. Lunde, R.N., Order No. 0007216

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 (LS0802183 CHI) (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.

It is appropriate for Respondent to pay the full costs of the investigation and prosecution of these proceedings. Because Respondent defaulted and did not file an Answer, the factual allegations identified in the Division's Complaint were deemed admitted. The Respondent's misconduct includes failure to cooperate with the Board's investigation and suspension of her Minnesota nursing license following a violation of a Minnesota Board order. These violations are a clear disregard for both the Board's and Minnesota Board's authority. The level of discipline sought is an indefinite suspension with Respondent's ability to petition the Board to terminate the suspension, a substantial 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 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.

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's license to practice as a registered nurse in Wisconsin (license no. 225499-30), and Respondent's right to apply for renewal of her license, are SUSPENDED for an indefinite period.
- 2. 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 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 conditions and/or limitations on Respondent's license that it deems appropriate to protect the health, safety, and welfare of patients and the public. Any conditions or restrictions must relate to the misconduct proven in this matter and must serve one of the following purposes: promoting the

Respondent's rehabilitation, protecting the public from other instances of misconduct, or deterring other credential holders from engaging in similar conduct.

- 4. Whether the Board or its designee grants Respondent's petition for a stay of suspension, and/or imposes any conditions and limitations on Respondent's license is within its sole discretion and is not subject to appeal.
- 5. In the event Respondent violates any term of this Order while a stay of suspension is in place, the Board or its designee may remove the stay, without further notice or? hearing, until Respondent has complied with the terms of this Order. The Board or its designee may, in conjunction with any removal of any stay, prohibit Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph 2.
- 6. Respondent shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code. § SPS 2.18.
- 7. Petitions, payments of costs (made payable to Department of Safety and Professional Services), and any other requests for information or submissions related to this Order shall be submitted 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 this information online at: https://dspsmonitoring.wi.gov.

- 8. Pursuant to Wis. Stat. § 441.51(5)(b), Respondent's multistate licensure privilege to practice in all Compact states besides Wisconsin is deactivated during the pendency of this Order.
- 9. 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 Milwaukee, Wisconsin on May 5, 2022.

STATE OF WISCONSIN DIVISION OF HEARINGS AND APPEALS 4822 Madison Yards Way, 5<sup>th</sup> Floor North Madison, Wisconsin 53705-5400

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By: anghea Buner

Andrea E. Brauer, Administrative Law Judge