

## 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 Clifton W. Davison, R.N., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0008161**

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**Division of Legal Services and Compliance Case No. 19 NUR 504**

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 8th day of September, 2022.

A handwritten signature in blue ink, appearing to read "Dominic H. Edelstein".

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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 Clifton Davison, R.N., Respondent

DHA Case No. SPS-22-0028  
DLSC Case No. 19 NUR 504

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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:

Clifton Davison, R.N.  
7900 Wellsview Scenic Ln.  
Nashville, TN 37938

Wisconsin Board of Nursing  
P.O. Box 8366  
Madison, WI 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 53705

PROCEDURAL HISTORY

On April 1, 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, Clifton Davison, R.N., by mailing copies to his 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. Wis. Admin. Code § SPS 2.09(4).

Following the expiration of the 20-day period to file an answer, the Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for May 12, 2022, at 10:00 a.m. The Respondent did not appear.

Based on the Respondent's failure to file an answer to the Complaint and failure to participate in the prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)I. On May 18, 2022, the ALJ issued a Notice of Default against the Respondent and ordered the Division to file a recommended Proposed Decision and Order by June 17, 2022. The Division timely filed its submission.

### FINDINGS OF FACT

#### Facts Related to the Alleged Violations

Findings of Facts 1-10 are set forth in the Division's Complaint against the Respondent filed in this matter.

1. Respondent Clifton Davison, R.N. (Year of Birth: 1961) is not and has never been licensed as a nurse in the state of Wisconsin.
2. Respondent is licensed as a registered nurse in the state of Tennessee (license no. 99882) and possesses multistate privileges via the Nurse Licensure Compact (Compact), first issued on May 19, 1994, and current through June 20, 2023.
3. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is 7900 Wellsvue Scenic Lane, Nashville, Tennessee 37938.
4. At all times relevant to this proceeding, Respondent worked as a registered nurse for a nurse staffing agency and was assigned to a hospital in Janesville, Wisconsin (Hospital).
5. Between May 18 and June 7, 2019, Respondent failed to meet the standard of care while caring for three critical care Hospital patients (Patients A-C), as follows:
  - i. On May 18, 2019, Respondent failed to document Patient A's vitals every hour as ordered.
  - ii. On May 24, 2019, Respondent administered a propofol bolus to Patient B three times without a documented order or any documentation of why they were administered.
  - iii. On June 7, 2019, Respondent administered Levophed to Patient C at 12 mcg/kg/min on one occasion and 10 mcg/kg/min on another. This substantially exceeded the ordered dose of 0-0.4mcg/kg/min.
6. Respondent is aware of the identities of Patient A-C.
7. On April 20, 2021, while investigating a complaint filed against Respondent alleging the above misconduct, the Department sent a request for a response to Respondent's

mailing address on file as well as to his email address on file (CLIF3232@gmail.com). No response was received.

8. On May 4, 2021, the Department sent a second request for a response to Respondent's mailing address on file as well as his email address on file. No response was received.

9. On May 20, 2021, the Department sent a third request for a response to the allegations to Respondent's email address on file. No response was received.

10. On June 28, 2021, Respondent sent a response to the Department from his email address on file.

#### Facts Related to Default

11. On April 1, 2022, the Division served the Notice and the Complaint on the Respondent at his address of record with the Department by both certified and regular mail.

12. The Respondent did not file an answer to the Complaint.

13. Following the expiration of the 20-day period to file an answer, the ALJ scheduled a telephone prehearing conference for May 12, 2022.

14. Notice of the scheduled prehearing conference was sent to both parties via regular mail. The Notice instructed the Respondent to contact the ALJ with a telephone number at which the Respondent could be reached for the conference no later than May 11, 2022. The Respondent did not contact the ALJ.

15. At the prehearing conference held on May 12, 2022, the ALJ attempted to reach the Respondent at his telephone number on file with the Division. The 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.

16. The Division moved for default based on the 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).

17. On May 18, 2022, the ALJ issued a Notice of Default and Order against the Respondent and ordered the Division to file and serve a recommended proposed decision and order no later than June 17, 2022.

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

## DISCUSSION

### Jurisdictional Authority

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.

Wisconsin has adopted the Compact and is a party state for the purposes of this matter under Wis. Stat. § 451.51(2)(k).

The Board has jurisdiction over the Respondent’s multistate privilege to practice nursing in Wisconsin and authority to take adverse action against his multistate privilege pursuant to Wis. Stat. §§ 441.51(3)(d), (e), and (5)(a)1. Adverse action against the Respondent’s multistate privilege to practice in Wisconsin includes revocation, suspension, probation, or any other action that affects a nurse’s authorization to practice under a multistate privilege. Wis. Stat. § 441.51(3)(d).

The Division of Hearings and Appeals has authority to issue the proposed decision and order pursuant to Wis. Stat. §§ 227.43(1m) and 441.51(3)(e), 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 his 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 properly served the Respondent with the Notice of Prehearing Conference by mailing it to his 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 § SPS 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.

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 conference scheduled for May 12, 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, 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 pursuant to Wis. Stat. §§ 441.07 and 441.51(3)(d). 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).

Conduct that is grounds for the Board to take disciplinary action includes:

- a. 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).
- b. Failing to conform to the minimal standards of acceptable nursing practice in a way that may create unnecessary risk or danger to a patient’s life, health, or safety. Wis. Admin. Code § N 7.03(6)(c).
- c. Making an error in prescribing, dispensing, or administering medication. Wis. Admin. Code § N 7.03(8)(d).

The Respondent engaged in conduct that 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. The Respondent failed to respond to the Division’s attempts to contact him during the Division’s investigation of this case. In addition, the Respondent failed to appear and participate in these proceedings. The Respondent’s actions, or lack thereof, demonstrate a repeated failure to cooperate in a timely manner with the Board’s investigation.

The Respondent also engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(6)(c) by failing to conform to the standards of acceptable nursing practice in a way that may create unnecessary risk or danger to a patient’s life, health, or safety. While caring for critical care patients at a hospital, the Respondent failed to document a patient’s vital signs and administered medication that exceeded physician orders. This medication included Levophed, a vasoconstrictor, and propofol, a short-acting anesthetic. Neither of these actions conform to the standard of care for any patient, and over-administering fast acting medication presents a high risk to a patient’s health regardless of their condition.

The Respondent also engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(8)(d) by making an error in administering medication. The Respondent administered both Levophed and propofol in excess of what was ordered for the patient, and failed to properly document that administration, constituting multiple errors.

By engaging in conduct qualifying as grounds for taking disciplinary action on his license, along with the Respondent's failure to make any argument to the contrary, the Respondent is subject to discipline pursuant to Wis. Stat. §§ 441.07(1g)(b) and (d), 441.51(3)(d), and Wis. Admin. Code § N 7.03.

### Discipline

The Division recommends that the Respondent's multistate privilege to practice nursing in Wisconsin be suspended indefinitely. Because the Respondent has been found in default for his failure to participate in these proceedings, and because the recommended discipline is consistent with the purposes articulated in *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976), 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, the Respondent committed medication and documentation errors. While the 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 this matter.<sup>2</sup> Depending on the information provided, the Board may grant a petition to stay the suspension and impose conditions on the Respondent's license that promotes rehabilitation, such as providing verification that the Respondent has completed relevant education.

The Division's recommended discipline protects the public from other potential instances of misconduct by ensuring that the Board can adequately monitor the 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

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

<sup>2</sup> Department investigations involving medication and documentation errors include, among other things, questions related to the circumstances surrounding the errors, a respondent's attempts to correct the errors, and whether a respondent has completed any education related to the circumstances that led to the suspension.



licensee's 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 committed medication and documentation errors and has since failed to communicate with the Department despite multiple requests for information. Therefore, it has not been possible to ensure that the Respondent is safely practicing nursing. As such, an indefinite suspension is appropriate to protect the public.

The recommended discipline 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 multistate privilege to practice in Wisconsin 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);<sup>3</sup> *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);<sup>4</sup> *In the Matter of the Disciplinary Proceedings Against Nancy M. Mokaya, R.N.*, Order Number 0008013 (June 9, 2022) (Board suspended Respondent's license indefinitely for failing to cooperate with the Board's investigation and proceedings and Board granted ability to impose conditions and/or limitations on the license upon stay of suspension).<sup>5</sup>

Based upon the facts of this case, the factors set forth in *Aldrich*, and prior Board decisions, an indefinite suspension of the Respondent's multistate privilege to practice in Wisconsin is warranted.

#### Costs

The Board is vested with discretion concerning whether 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. *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*

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

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

<sup>5</sup> *In the Matter of Disciplinary Proceedings Against Nancy M. Mokaya, R.N.*, Order Number 0008013.

(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 the Respondent to pay the full costs of the investigation and prosecution of these proceedings. Because the 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. This violation is a clear disregard for the Board's authority. The level of discipline sought is an indefinite suspension with the Respondent's ability to petition the Board to terminate the suspension, a substantial level of discipline responsive to the violations in this matter. The 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. The Respondent has not offered any acceptable justification for his actions. Such conduct demonstrates disregard for the authority of the Board and disregard for his 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 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 multistate privilege to practice nursing in Wisconsin pursuant to licensure in Tennessee (license no. 99882), or licensure in any other Compact state, is **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 conditions and/or limitations on the Respondent's privilege to practice in Wisconsin 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 the Respondent's petition for a stay of suspension, and/or imposes any conditions and limitations on the Respondent's privilege to practice in Wisconsin is within its sole discretion and is not subject to appeal.

5. In the event the 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 of hearing, until the Respondent has complied with the terms of this Order. The Board or its designee may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph 2.

6. The 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:

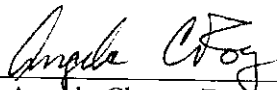
Department Monitor  
Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 7190, Madison, WI 53707-7190  
Telephone (608) 266-2112; Fax (608) 266-2264  
[DSPSMonitoring@wisconsin.gov](mailto:DSPSMonitoring@wisconsin.gov)

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

8. 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 July 21, 2022.

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  
Fax: (608) 264-9885

By:   
Angela Chaput Foy  
Administrative Law Judge