

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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**Before the
State Of Wisconsin
Board of Nursing**

In the Matter of the Disciplinary Proceedings
Against Lindsey M. Wilda, R.N., Respondent.

FINAL DECISION AND ORDER
Order No. **ORDER 0008207**

Division of Legal Services and Compliance Case No. 21 NUR 240

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 October, 2022.

A handwritten signature in black ink, appearing to read "Emily J. Ryan".

Member
Board of Nursing



**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Disciplinary Proceedings
Against Lindsey M. Wilda, R.N., Respondent.

DHA Case No. SPS-22-0026
DLSC Case No. 21 NUR 240

PROPOSED DECISION AND ORDER

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

Lindsey M. Wilda, R.N.
1804 E. 6th St.
Coal Valley, IL 61240

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 Colleen Meloy
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

On March 29, 2022, the Department of Safety and Professional Services Division of Legal Services and Compliance (Department), served the Notice of Hearing and the Complaint in this matter on Respondent Lindsey M. Wilda, 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 May 4, 2022. At the Department's request, the telephone conference was subsequently rescheduled for June 20, 2022 at 10:00 a.m. The Respondent did not appear.

On June 20, 2022, the ALJ issued a Notice of Default and Order against the Respondent and ordered the Department to file a recommended Proposed Decision and Order by July 20, 2022. The Department timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-12 are taken from the Department's Complaint filed against Respondent in this matter.

1. Respondent Lindsey M. Wilda, R.N., (is licensed in the state of Wisconsin to practice as a registered nurse, having license number 221088-30, first issued on January 29, 2015.

2. Respondent's license was set to expire on February 28, 2022, and she has not attempted to renew. However, due to 2021 Wisconsin Act 10, all health care provider credentials remain active until thirty days after the end of the declared national emergency. Therefore, Respondent's license remains active despite the fact she has not completed any of the renewal requirements as of the date of the Complaint. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to apply for renewal upon payment of a fee until February 28, 2027.

3. The most recent address on file with the Department for Respondent is in Coal Valley, Illinois 61240.

4. At all times relevant to this proceeding, Respondent was also licensed to practice as a registered nurse in the state of Iowa.

5. On January 11, 2018, the Iowa Board of Nursing (Iowa Board) charged Respondent with practicing nursing while under the influence of alcohol and failing to assess, accurately document, evaluate or report the status of a patient. The Notice of Hearing and Statement of Charges filed against Respondent alleged, *intra alia*:

- a. Respondent was employed at an acute care facility from April 4, 2016, to July 25, 2016.
- b. On July 25, 2016, Respondent tested positive for alcohol on two for-cause breathalyzer tests administered during her shift.
- c. In July 2016, Respondent failed to document assessments and/or documented incomplete assessments during three separate shifts.

6. On April 4, 2018, Respondent stipulated to an Agreement Not to Practice with the Iowa Board and agreed not to practice in Iowa as a nurse while the Iowa Board disciplinary proceedings were pending.

7. On July 10, 2018, the Iowa Board filed an Amended Notice of Hearing and Statement of Charges against Respondent which alleged, *intra alia*:

- a. Respondent was employed at an acute care facility from May 2017 to March 2018.
- b. On March 9, 2018, Respondent tested positive for alcohol on two for-cause breathalyzer tests administered during her shift.

8. On October 9, 2019, Respondent entered into a Settlement Agreement and Final Order with the Iowa Board which indefinitely suspended Respondent's nursing license and placed Respondent on a minimum twelve-month probationary period during which Respondent was required to undergo treatment for her alcohol addiction.

9. Respondent failed to report the Iowa Board Agreement Not to Practice and the Settlement Agreement and Final Order to the Wisconsin Board of Nursing (Board).

10. On July 1, 2021, the Department sent an email to Respondent at her email address on file with the Department requesting additional information and her response to the allegations. Respondent failed to respond.

11. On July 27, 2021, the Department sent a letter to Respondent at her mailing address on file with the Department requesting additional information and her response to the allegations. Respondent failed to respond.

12. On August 18, 2021, the Department left a voicemail message for Respondent at her telephone number on file with the Department requesting additional information and her response to the allegations. Respondent failed to respond.

Facts Related to Default

13. On March 29, 2022, 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 mail. (Affidavit of Service ¶¶ 1, 2).

14. Respondent failed to file an Answer to the Complaint.

15. Following the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for May 4, 2022. At the Department's request, the telephone prehearing conference was subsequently rescheduled for June 20, 2022 at 10:00 a.m.

16. Notice of the rescheduled prehearing conference was sent to both parties via regular mail, pursuant to Wis. Admin. Code § HA 1.03. The Notice also instructed Respondent to contact the ALJ with a telephone number at which Respondent could be reached for the conference no later than June 17, 2022.

17. The Respondent did not contact the ALJ to provide a telephone number where she could be reached for the June 20, 2022 prehearing conference.

18. The Respondent failed to appear or be available for the prehearing conference held on June 20, 2022 at 10:00 a.m. The ALJ attempted to reach Respondent at her telephone number on

file with the Department at the scheduled time, but the Respondent did not answer. The ALJ left a voicemail for Respondent instructing her to contact the ALJ at the telephone number provided by 10:20 a.m., failing which the ALJ would entertain the Department's motion for default. The ALJ further followed up by email and advised Respondent that her failure to contact the ALJ could result in judgment being granted against her. The Respondent did not return the ALJ's telephone call and did not otherwise respond to the ALJ's email or contact the ALJ.

19. The Department moved for default 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 June 20, 2022, the ALJ issued a Notice of Default and Order against the Respondent and ordered the Department to file and serve a recommended Proposed Decision and Order no later than July 20, 2022.

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

DISCUSSION

Jurisdictional Authority

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.

Although Respondent's license was set to expire 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, or until February 28, 2027. Wis. Stat. § 440.08(3). The Wisconsin Board of Nursing (Board) has jurisdiction over this matter pursuant to Wis. Stat. § 441.07. Pursuant to Wis. Admin. Code § SPS 2.10(2), the undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1).

Default

The Department properly served the Notice of Hearing and Complaint upon Respondent by mailing a copy to her last known address on file with the Department. 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 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 conference scheduled for June 20, 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.

Violations

The Board has the authority to impose discipline against the Respondent pursuant to Wis. Stat. § 441.07. Following an investigation, if the Board determines that a nurse has committed “[o]ne or more violations of this subchapter,” “[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 constitutes grounds for the Board to take disciplinary action includes:

- 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).
- c. Unable to practice safely by reason of alcohol or other substance use. Wis. Admin. Code § N 7.03(6)(f).

Respondent engaged in conduct that 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 January 11, 2018, the Iowa Board charged Respondent with practicing while under the influence of alcohol and failing to assess, accurately document, evaluate or report the status of a patient. On July 10, 2018, the Iowa Board filed an Amended Notice of Hearing and Statement of Charges against Respondent for testing positive for alcohol on two for-cause breathalyzer tests administered during her shift on March 9,

2018. On October 19, 2019, the Iowa Board indefinitely suspended Respondent's nursing license and placed Respondent on a minimum twelve-month probationary period during which Respondent was required to undergo treatment for her alcohol addiction. Respondent failed to report the Iowa Board's actions to the Board.

Respondent also 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. Respondent failed to respond to any of the Department's attempts to contact her during its 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.

Respondent also engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(6)(f), by being unable to practice safely by reason of alcohol or other substance. On July 25, 2016 and March 9, 2018, Respondent tested positive for alcohol on two for-cause breathalyzer tests administered during her nursing shift in Iowa. Respondent has not responded or otherwise provided an explanation or defense as to her actions, and the facts are therefore, undisputed.

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), (c) and (d), and Wis. Admin. Code § N 7.03.

Discipline

The Department requests that Respondent's right to renew her license be revoked. 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).

In this case, Respondent's Iowa license was suspended after she practiced while under the influence of alcohol and failed to assess, accurately document, evaluate or report the status of a patient. Although promoting rehabilitation is one of the purposes of discipline, rehabilitation seems unlikely in this case. Furthermore, had the Board known that Respondent's license was under investigation in Iowa, the Board may have decided to deny renewing Respondent's license or limit her license to adequately address concerns of rehabilitation. Instead, Respondent took away the Board's ability to rehabilitate Respondent and protect the public by failing to report the Iowa Order. Finally, having obtained no Answer from Respondent following the Notice of Hearing and Complaint, and having failed to appear for the prehearing conference, the Board cannot determine whether any rehabilitative measures would be effective.¹ Respondent's rehabilitation can only be

¹ Should Respondent wish to return to nursing in Wisconsin following the revocation of her right to renew her license, Respondent may apply for reinstatement of her license via Wis. Admin. Code § N 2.41(3). The application for reinstatement will allow the Board to require evidence of rehabilitation or change in circumstances warranting reinstatement. See Wis. Admin. Code § N 2.41(3).

determined if the Respondent cooperates with the Board. The Department's recommendation accounts for this by allowing the Respondent to petition the Board to reinstate her license once the Respondent provides information requested by the Department in relation to the matter.²

The recommended discipline protects 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). 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 competence to practice the profession, then revocation is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984). The Respondent's Iowa license was suspended after the Respondent tested positive for alcohol and failed to assess, accurately document, evaluate or report the status of a patient at an acute care facility and subsequently violated an Iowa Board order and tested positive for alcohol during her shift. Since she has failed to communicate with the Department's multiple requests for information on behalf of the Board, it has not been possible to ensure that Respondent is safely practicing nursing. As such, revocation of her right to renew is appropriate to protect the public.

The Board cannot assure the public that Respondent is competent to practice nursing at this time. The Iowa Board of Nursing suspended Respondent's license after she practiced while under the influence of alcohol and failed to assess, accurately document, evaluate or report the status of a patient. Revocation of her license will also remind Respondent of her duty to abide by the Board's rules of professional conduct, to timely respond to Board inquiries, and that her actions have serious consequences for her licensure.

The recommended discipline also deters other credential holders from engaging in similar conduct. Respondent disregarded the Board's authority and the laws in place to protect public health and welfare. Furthermore, Licensees should be on notice that they cannot avoid disciplinary action by simply refusing to cooperate with the Board. A revocation of Respondent's license will serve to deter others from committing similar violations by sending a message that such conduct is not tolerable.

The recommended discipline is consistent with Board precedent. *See 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)³; *In the Matter of Disciplinary Proceedings Against Rochelle A. Current, R.N.*, Board Order No. 06238 (June 13, 2019) (Board revoked nurse's right to renew her license pursuant to the Nurse Licensure Compact for misdemeanor convictions, failure to report

² 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 and/or treatment related to the circumstances that led to the suspension.

³ *In the Matter of the Disciplinary Proceedings Against Jessica A. Lunde, R.N.*, Order No. 0007216

convictions to the Board, and discipline in Arkansas)⁴; *In the Matter of Disciplinary Proceedings Against Stephanie Y. Gaines, L.P.N.*, Board Order No. 04686 (April 29, 2016) (Board revoked nurse's right to renew her license and privilege to practice nursing pursuant to the Nurse Licensure Compact for failure to cooperate with Board's investigation after complaint that nurse took financial advantage of a patient and was convicted of forgery-uttering, unauthorized use of personal identifying information to obtain money, possession of narcotics and bail jumping)⁵; *In the Matter of Disciplinary Proceedings Against Kelly L. Kowalkowski, R.N.*, Board Order 04613 (March 18, 2016) (Board revoked nurse's right to renew her license and privilege to practice nursing pursuant to the Nurse Licensure Compact for failure to cooperate with an investigation by the Board after being charged with several drug-related offenses)⁶.

Based upon the facts of this case, the factors set forth in *Aldrich*, and prior Board decisions, it is appropriate to revoke Respondent's right to renew her license to practice registered nursing in Wisconsin.

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 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 Iowa nursing license following a violation of a Iowa Board order. These violations are a clear disregard for both the Board's and Iowa Board's authority. The level of discipline sought is an indefinite suspension with Respondent's ability to petition the Board to stay 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

⁴ *In the Matter of Disciplinary Proceedings Against Rochelle A. Current, R.N.*, Board Order No. 06238

⁵ *In the Matter of Disciplinary Proceedings Against Stephanie Y. Gaines, L.P.N.*, Board Order No. 04686

⁶ *In the Matter of Disciplinary Proceedings Against Kelly L. Kowalkowski, R.N.* Board Order 04613

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.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing (Board) has jurisdiction over this matter pursuant to Wis. Stat. § 441.07.
2. Respondent is in default by failing to answer the complaint and not being available for the prehearing pursuant to Wis. Admin. Code § HA 1.07(3)(c).
3. Respondent engaged in conduct that 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.
4. 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.
5. Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(6)(f), by being unable to practice safely by reason of alcohol or other substance.
6. As a result of the above conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b), (c) and (d), and Wis. Admin. Code § N 7.03.
7. Revocation of the Respondent's nursing license is reasonable and appropriate.
8. It is appropriate for Respondent to pay the full costs of the investigation and prosecution in this matter pursuant to Wis. Admin. Code § SPS 2.18.
9. The Division of Hearings and Appeals has authority to issue this proposed decision pursuant to Wis. Stat. § 227.46 and Wis. Admin. Code § SPS 2.10.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of Respondent Lindsey M. Wilda, R.N., to practice as a registered nurse in the state of Wisconsin (license number 221088-30) is hereby REVOKED.

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

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

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 September 2, 2022.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____

Kristin P. Fredrick
Administrative Law Judge