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

In the Matter of the Disciplinary Proceedings
Against Suri A. Rosare, R.N., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0008341**

Division of Legal Services and Compliance Case No. 21 NUR 716

The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Board of Nursing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 13th day of January, 2023.

Al Rehmeier
Member

Board of Nursing

**DSPS Chief Legal Counsel,
Delegatee**



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings
Against Suri A. Rosare, R.N., Respondent.

DHA Case No. SPS-22-0050
DLSC Case No. 21 NUR 716

PROPOSED DECISION AND ORDER

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

Suri A. Rosare, R.N.
825 Rochester St.
Mukwonago, WI 53149

Suri A. Rosare, R.N.
9008 W. Mitchell St.
West Allis, WI 53214

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

PROCEDURAL HISTORY

On August 15, 2022, the Department of Safety and Professional Services (Department) Division of Legal Services and Compliance (Division), served the Notice of Hearing and Complaint in this matter on Respondent Suri A. Rosare, 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. 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 September

15, 2022, at 10:00 a.m. Attorney Gretchen Mrozinski appeared on behalf of the Division. Respondent did not appear.

On September 15, 2022, the ALJ issued a Notice of Default and Order against Respondent and ordered the Division to file a recommended Proposed Decision and Order by October 17, 2022. The Division timely filed its submission.

PROPOSED FINDINGS OF FACT

Facts Related to the Alleged Violations

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

1. Suri A. Rosare, R.N., (Respondent) (DOB: November 18, 1977) is licensed in the state of Wisconsin to practice as a registered nurse, with multistate privileges pursuant to the Nurse Licensure Compact (Compact), having license number 221780-30, first issued on March 19, 2015. Respondent's license was set to expire on March 1, 2022, and it does not appear she has attempted to renew.

2. 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 825 Rochester Street, Mukwonago, Wisconsin 53149.¹ The most recent email address on file with the Department for Respondent is Sur88760@icloud.com.

4. At all times relevant to this proceeding, Respondent worked as a registered nurse at a hospital located in Lufkin, Texas (Hospital). Respondent worked for the Hospital pursuant to her multistate privileges under the Compact.

5. On or about June 9, 2021, Respondent reported to work at the Hospital with the odor of intoxicants on her breath. The Director of Nursing immediately relieved Respondent of her duties and counseled Respondent that she was not to consume alcohol within 24-48 hours before a scheduled work shift.

6. On November 4, 2021, Respondent reported to work at the Hospital intoxicated. She presented to work with a strong odor of alcohol on her breath and admitted to Hospital personnel that she had consumed alcohol the night before. The Hospital immediately relieved Respondent of her duties.

7. Respondent resigned in lieu of termination from the Hospital.

¹ Respondent also listed 9008 West Mitchell Street, West Allis, Wisconsin 53214 as her mailing address.

8. In early November 2021, the Hospital filed a formal complaint with the Texas Board of Nursing. On November 23, 2021, the Department received a copy of the complaint filed with the Texas Board of Nursing. On November 29 and December 7, 2021, a Division intake staff person emailed Respondent at her email address of record with the Department seeking a response to the complaint. Respondent did not respond.

9. On December 15, 2021, a Division intake staff person mailed Respondent at her mailing address of record with the Department seeking a response to the complaint. Respondent did not respond.

10. On January 6, 2022, the Board of Nursing opened the instant matter to investigate whether Respondent violated any rules or statutes applicable to her Wisconsin registered nurse license.

11. On February 4, 2022, a Division investigator telephoned Respondent and left a voicemail message requesting a response to the complaint. Respondent returned the telephone call and advised the Division investigator that she would provide a written statement to the complaint within two weeks. Respondent did not provide any response, written or verbal, following the February 4, 2022 telephone call.

12. On March 15, March 18, and April 12, 2022, a Division investigator emailed and telephoned Respondent at her email address and telephone number of record with the Department seeking a response to the complaint. Respondent did not respond.

Facts Related to Default

13. On August 15, 2022, the Division 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.

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 September 15, 2022 at 10:00 a.m.

16. Notice of the prehearing conference was sent to both parties via regular mail, consistent with 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 September 14, 2022.

17. Respondent did not contact the ALJ to provide a telephone number where she could be reached for the September 15, 2022 prehearing conference.

18. Respondent failed to appear or be available for the prehearing conference held on September 15, 2022. The Division provided the ALJ two telephone numbers for Respondent; however, the ALJ was unable to reach Respondent at either number at the scheduled time. The ALJ sent an email to Respondent instructing her to contact the ALJ at the telephone number

provided by 11:00 a.m., failing which the ALJ would entertain the Division's motion for default. Respondent did not respond to the ALJ's email or otherwise contact the ALJ.

19. The Division 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 September 15, 2022, the ALJ issued a Notice of Default and Order against Respondent and ordered the Division to file and serve a recommended Proposed Decision and Order no later than October 17, 2022.

21. 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). 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, or until February 28, 2027. Wis. Stat. § 440.08(3).

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. § 227.46 and Wis. Admin. Code § SPS 2.10(2).

Default

The Notice of Hearing and Complaint in this matter were served on Respondent by the Division, on August 15, 2022, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. An Answer to a Complaint must be filed within 20 days from the date of service of the Complaint. Wis. Admin. Code § SPS 2.09(4). No Answer has been filed.

Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for Thursday, September 15, 2022 at 10:00 am. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which Respondent could be reached for the conference no later than September 14, 2022. Respondent failed to provide a telephone number. At the prehearing conference held on Thursday, September 15, 2022, the Division provided two telephone numbers for Respondent; however, the ALJ was unable to reach the Respondent at either number.

Whereupon the ALJ sent an email to the Respondent instructing the Respondent to contact the ALJ by 11:00 am, failing which the ALJ would grant the Division's motion for default. Respondent has neither filed an answer to the Complaint nor contacted the ALJ at the telephone number provided by the ALJ.

Based on Respondent's failure to file an Answer to the Complaint and failure to appear at the prehearing conference in this matter, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

If a Respondent fails to file an Answer as required or fails to appear at the hearing at the time fixed therefor, the Respondent is in default. Wis. Admin. Code § SPS 2.14. *See also* Wis. Admin. Code § HA 1.07(3)(b). Wisconsin Admin. Code § HA 1.07(3)(c) delineates the circumstances which constitute a failure to appear:

For a telephone or video hearing or prehearing, 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 hearing or prehearing conference: (1) The failure to provide a telephone number to the division after it had been requested; (2) the failure to answer the telephone or videoconference line; (3) the failure to free the line for the proceeding; (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

In light of Respondent's failure to file an Answer to the Complaint and failure to appear for the prehearing conference, the ALJ found Respondent to be in default. Wisconsin Admin. Code § SPS 2.14 provides that when a respondent is in default, "the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence." *See also* Wis. Admin. Code § HA 1.07(3)(b) ("If a respondent fails to appear, the administrative law judge may ... take the allegations in an appeal as true as may be appropriate....")

Here, Respondent failed to file an answer to the Complaint, failed to appear at the prehearing telephone conference scheduled for September 15, 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 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," including "[a]cts which show the registered nurse...to be unfit or incompetent by reason of...abuse of alcohol or other drugs," or the registered nurse has committed "[m]isconduct or unprofessional conduct," the Board may "revoke, limit, suspend or deny a renewal of a license of a registered nurse . . ." Wis. Stat. § 441.07(1g)(b), (c) and (d).

The Board may take disciplinary action against a license if the credential holder fails “to cooperate in a timely manner, with the Board’s investigation of a complaint filed against the license holder” or if the credential holder is “unable to practice safely by reason of alcohol or other substance use.” Wis. Admin. Code § N 7.03(1)(c) and (6)(f). Pursuant to Wis. Admin. Code § N 7.03(1)(c), “[t]here is a rebuttable presumption that a credential holder who takes longer than 30 days to respond to a request of the board has failed to cooperate in a timely manner.”

On June 9, 2021, Respondent reported to work with the odor of intoxicants on her breath. She was immediately relieved of her duties and specifically told not to consume alcohol within 24-48 hours before a scheduled work shift. On November 4, 2021, Respondent reported to work intoxicated and again was relieved of her duties. Respondent smelled of alcohol and admitted that she had consumed alcohol the night before. Respondent has not responded or otherwise provided an explanation for, or defense of, her actions. Such actions demonstrate that Respondent is unable to practice safely by reason of alcohol or other substance abuse, which constitute grounds for disciplinary action pursuant to Wis. Admin. Code § N 7.03(6)(f).

Finally, Respondent failed to cooperate in a timely manner with the Board’s investigation and the hearing process on multiple occasions. From February 4, 2022 through April 12, 2022 the Board investigator requested that the Respondent provide a response to the complaint against her. More than thirty days passed without a response from the Respondent creating a presumption of her failure to cooperate in a timely manner. Such conduct provides grounds for disciplinary action pursuant to Wis. Admin. Code § N 7.03(1)(c).

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 Division recommends that Respondent’s right to renew her license in Wisconsin, as well as any privilege she may have to practice in Wisconsin pursuant to a multistate 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 while working as a nurse in Texas under her multistate privileges provided by her Wisconsin license, arrived to work intoxicated on at least two occasions within a five (5) month period despite being counseled by the Hospital that she was not to consume alcohol within 24 to 48 hours before her scheduled shift. Although promoting rehabilitation is one of the purposes of discipline, absent any response or participation in the Board’s investigation or this hearing process, there is no evidence that the Respondent’s rehabilitation is likely in this case. Respondent ignored the counseling and directives she received from the Hospital on June 9, 2021,

ignored the Division's requests for information during the investigation, and failed to participate in the hearing process. Such actions are demonstrative of Respondent's disregard for the Board's authority to impose rehabilitation measures on the nurses it licenses. Respondent's rehabilitation can only be determined if Respondent cooperates with the Board.² The Department's recommendation accounts for this by allowing Respondent to petition the Board to reinstate her license once Respondent provides information requested by the Department in relation to this matter.³ Revocation of her right to apply to renew 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 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). Respondent twice reported to work as a nurse with the odor of intoxicants on her breath and was twice relieved of her duties. On November 4, 2021, she ignored the Hospital's directives to refrain from ingesting alcohol within 24-48 hours before a scheduled shift, and reported to work intoxicated. Since she failed to communicate with the Division's multiple requests for information on behalf of the Board, it has not been possible to ensure that Respondent is safely practicing nursing. Simply put, the Board cannot at this time assure the public that Respondent can competently and safely practice nursing. As such, revocation of her right to renew her license is appropriate to protect the public.

The recommended discipline will also serve to deter other credential holders from engaging in similar conduct. A licensed nurse in Wisconsin should know that reporting to work in an intoxicated state and/or with alcohol on your breath will not be tolerated. A licensed nurse in Wisconsin should know that failing to respond to requests for information made on behalf of the Board will not be tolerated. Disregarding the Board's authority and the laws in place to protect public health and welfare have consequences. Licensees should be on notice that they cannot avoid disciplinary action by simply refusing to cooperate with the Board. A revocation of Respondent's right to renew her license will serve to deter others from committing similar violations by sending a message that such conduct is not tolerable.

² Should Respondent wish to return to nursing in Wisconsin following the revocation of her right to apply 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).

³ 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.

Finally, the recommended discipline is consistent with Board precedent. *See In the Matter of the Disciplinary Proceedings Against Jessica A. Lunde, R.N.*, Board 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)⁴; *In the Matter of Disciplinary Proceedings Against Rochelle A. Current, R.N.*, Board Order No. 0006238 (June 13, 2019) (Board revoked nurse's right to renew her license pursuant to the Nurse Licensure Compact for misdemeanor convictions, failure to report convictions to the Board, and discipline in Arkansas)⁵; *In the Matter of Disciplinary Proceedings Against Stephanie Y. Gaines, L.P.N.*, Board Order No. 0004686 (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)⁶; *In the Matter of Disciplinary Proceedings Against Kelly L. Kowalkowski, R.N.*, Board Order 0004613 (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)⁷.

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

⁴ *In the Matter of the Disciplinary Proceedings Against Jessica A. Lunde, R.N.*, Order No. 0007216

⁵ *In the Matter of Disciplinary Proceedings Against Rochelle A. Current, R.N.*, Board Order No. 0006238

⁶ *In the Matter of Disciplinary Proceedings Against Stephanie Y. Gaines, L.P.N.*, Board Order No. 0004686

⁷ *In the Matter of Disciplinary Proceedings Against Kelly L. Kowalkowski, R.N.*, Board Order 0004613

allegations identified in the Division's Complaint were deemed admitted. Respondent's conduct in reporting to work smelling of intoxicants, reporting to work in an intoxicated state, and repeatedly ignoring the authority of the Board is serious misconduct. The Division is justified in seeking revocation which is the most serious of disciplinary outcomes. 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.

PROPOSED 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) and Wis. Admin. Code § SPS 2.14.
3. 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.
4. 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.
5. 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.
6. Revocation of Respondent's right to renew her nursing license is reasonable and appropriate.
7. 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.
8. 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.

PROPOSED ORDER

For the reasons set forth above, IT IS ORDERED that the right to renew the license of Respondent Suri A. Rosare, R.N., to practice as a registered nurse in the state of Wisconsin (license number 221780-30), as well as any privilege she may have to practice in Wisconsin pursuant to a multistate license, is 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 November 30, 2022.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Kristin P. Fredrick
Administrative Law Judge