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Before the
State Of Wisconsin
Radiography Examining Board

In the Matter of Disciplinary Proceedings Against
LUANA S. HAMMER, R.T.R., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0008428**

Division of Legal Services and Compliance Case No. 22 RAD 001

The State of Wisconsin, Radiography Examining Board, 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, Radiography Examining Board.

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

Dated at Madison, Wisconsin on the 10th day of March, 2023

Aloysius Rohmeyer

DSPS Chief Legal Counsel,
Delegatee

Member
Radiography Examining Board



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

In the Matter of Disciplinary Proceedings Against
LUANA S. HAMMER, R.T.R., Respondent.

DHA Case No. SPS-22-0066
DLSC Case No. 22 RAD 001

PROPOSED DECISION AND ORDER

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

Luana S. Hammer, R.T.R.
2169 Staborn Drive
Beloit, WI 53511

Wisconsin Radiography Examining Board
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 November 1, 2022, the Department of Safety and Professional Services, Division of Legal Services and Compliance (Department), filed a Notice of Hearing and Complaint alleging that Respondent Luana S. Hammer, R.T.R., committed unprofessional conduct by having an actual or potential inability to practice radiography with reasonable skill and safety due to use of alcohol or drugs, in violation of Wis. Admin. Code § RAD 6.01(15), and by failing to cooperate in a timely manner with the Department's investigation of a complaint filed against her, in violation of Wis. Admin. Code § RAD 6.01(14). Administrative Law Judge Kristin Fredrick (ALJ) was assigned to the matter.

On November 1, 2022, the Department served the Notice of Hearing and the Complaint in this matter on Respondent 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 § SPS 2.09(4). Following expiration of the 20-day period to file an Answer, the undersigned ALJ scheduled a telephone prehearing conference for December 7, 2022. The Respondent failed to provide contact information as requested by the ALJ and further, she failed to appear at or otherwise be available to participate in the prehearing conference.

On December 7, 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 January 6, 2023.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-11 are taken from the Department's Complaint filed against Respondent in this matter.

1. Respondent Luana S. Hammer, R.T.R., (DOB: 8/11/1966) is licensed in the state of Wisconsin to practice radiography, having license number 6567-142, first issued on October 17, 2014. This license expired on September 1, 2022, and has not been renewed. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to apply to renew upon payment of a fee until August 31, 2027.

2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is in Beloit, Wisconsin 53511.

3. At all times relevant to this proceeding, Respondent worked as a radiographer at a healthcare facility located in Beloit, Wisconsin (Facility).

4. On January 24, 2022, Respondent was found sleeping by Facility coworkers, and appeared impaired and unable to perform her basic duties.

5. The Facility commenced an investigation and required Respondent to undergo a reasonable suspicion urine drug screen (UDS) test.

6. On February 1, 2022, Respondent's UDS test results returned positive for cocaine and benzoylecgonine.

7. On February 2, 2022, Respondent resigned from the Facility.

8. On February 18 and March 10, 2022, the Department emailed Respondent at her email address of record requesting her response to the complaint. Respondent did not respond.

9. On March 10, 2022, the Department mailed a letter to Respondent at her mailing address of record requesting her response to the complaint. Respondent did not respond.

10. On March 24, 2022, a Department investigator called Respondent twice at her telephone number of record but got a message stating the call could not go through.

11. On March 28, 2022, the Department mailed a letter to Respondent via certified mail at her mailing address of record. On April 6, 2022, the Department received the certified mail receipt from the U.S. Postal Service indicating it was delivered on March 30, 2022. Respondent did not respond.

Facts Related to Default

12. On November 1, 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.

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

14. Following the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for December 7, 2022.

15. 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 December 6, 2022. Respondent did not contact the ALJ.

16. At the prehearing conference held on December 7, 2022, Respondent failed to appear. The ALJ attempted to reach Respondent at her telephone number on file with the Department. Respondent did not answer and the ALJ was unable to leave a voicemail. The ALJ contacted the Respondent via email instructing her that if she failed to respond, the ALJ would entertain the Department's motion for default. The Respondent failed to contact the ALJ or otherwise respond to the ALJ's requests.

17. 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).

18. On December 7, 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 January 6, 2023.

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

DISCUSSION

Jurisdictional Authority

The Wisconsin Radiography Examining Board (Board) has jurisdiction over this matter pursuant to Wis. Stat. § 462.07. 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. 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). Although Respondent’s license expired on September 1, 2022, the Board retains authority in this matter because Respondent has a right to apply to renew her license within five years of expiration, or until August 31, 2027. Wis. Stat. § 440.08(3).

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). Respondent failed to file an Answer to the Complaint within twenty (20) days or thereafter. Wis. Admin. Code § SPS 2.09(4). Following the expiration of the 20-day time period to file an Answer, the Division of Hearings and Appeals 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.

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

Here, the Respondent failed to file an answer to the Complaint, failed to appear at the prehearing telephone conference scheduled for December 7, 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 of Wisconsin Statute and Administrative Code

The Board has the authority to impose discipline against the Respondent pursuant to Wis. Stat. § 462.07. Following an investigation, if the Board determines that a radiographer “[v]iolates any law of this state...that substantially relates to the practice of radiography,” or “[e]ngages in unprofessional conduct,” it may “deny, limit, suspend, or revoke...” the license of a radiographer. Wis. Stat. § 462.07(2)(b) and (e).

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

- a. Having an actual or potential inability to practice radiography with reasonable skill and safety due to use of alcohol or drugs. Wis. Admin. Code § RAD 6.01(15).
- b. Failing to cooperate in a timely manner with the Department’s investigation of a complaint filed against the credential holder. Wis. Admin. Code § RAD 6.01(14).

Based upon the undisputed allegations set forth in the Complaint, the Department has established that the Respondent was under the influence of a drug while at her place of employment and was

observed sleeping on the job, appeared impaired, and unable to perform her job duties. In addition, the Respondent subsequently failed to respond to the Department's repeated requests for information during their investigation into the Respondent's conduct. By engaging in conduct that is grounds for taking disciplinary action against her license, along with her failure to participate in these proceedings and make any argument to the contrary, the Respondent is subject to discipline pursuant to Wis. Stat. § 462.07(2)(b) and (e) and Wis. Admin. Code § RAD 6.01.

Discipline

The Department seeks to impose discipline against the Respondent's licensure, including revocation of her right to apply to renew her license and her privilege to practice radiography, due to the violations identified above.

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).

Although promoting rehabilitation is one of the purposes of discipline, the likelihood of success of rehabilitation is unknown in this case due to the Respondent's failure to cooperate in the Department's investigation. Further, the Respondent repeatedly failed to recognize the authority of the Board by choosing to ignore requests for information made on behalf of the Board. The Board has a duty to protect the public by investigating complaints. The Board was exercising this duty when requesting that Respondent respond to allegations of working while impaired and the positive UDS results for cocaine and benzoylecgonine. As Respondent has failed to file a responsive Answer in this proceedings and has failed to appear for the prehearing conference, the Board cannot determine whether any rehabilitative measures would be effective.

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 was found sleeping by co-workers while at work and seemed impaired because she was unable to perform her basic work functions. 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 radiography. As such, revocation of her license and right to apply to renew is appropriate to protect the public.

The Board cannot assure the public that Respondent is competent to practice radiography at this time. 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 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 and right to apply to renew 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 precedent from other Boards. *See In the Matter of the Disciplinary Proceedings Against Lindsey M. Wilda, R.N.*, Order No. 0008207 (October 13, 2022) (Right to renew license was revoked after nurse's license was suspended by Iowa Board for testing positive twice for alcohol, failure to report the Iowa Order to the Board of Nursing, and failure to cooperate with the Board's investigation)¹; *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)²; *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)³; *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)⁴.

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 radiography 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.

¹ *In the Matter of the Disciplinary Proceedings Against Lindsey M. Wilda, R.N.*, Order No. 0008207

² *In the Matter of the Disciplinary Proceedings Against Jessica A. Lunde, R.N.*, Order No. 0007216

³ *In the Matter of Disciplinary Proceedings Against Stephanie Y. Gaines, L.P.N.*, Board Order No. 04686

⁴ *In the Matter of Disciplinary Proceedings Against Kelly L. Kowalkowski, R.N.* Board Order 04613

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 Department's Complaint were deemed admitted. The Respondent's misconduct includes falling asleep while at work, a positive UDS test for cocaine and benzoylecgonine, and her failure to cooperate with the Board's investigation. These violations are a clear disregard for the Board's authority. The level of discipline sought is revocation of Respondent's license and her right to apply to renew, a substantial level of discipline responsive to the violations in this matter. Respondent failed to cooperate with the Department's investigation and this disciplinary process by failing to respond to the Department'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 radiographer.

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 Radiography Examining Board (Board) has jurisdiction over this matter pursuant to Wis. Stat. § 462.07.
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 § RAD 6.01(15) by having an actual or potential inability to practice radiography with reasonable skill and safety due to use of alcohol or drugs.
4. Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § RAD 6.01(14) by failing to cooperate in a timely manner with the Department's investigation of a complaint filed against the credential holder.
5. As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 462.07(2)(b) and (e), and Wis. Admin. Code § RAD 6.01.
6. Revocation of the Respondent's right to apply to renew her radiography 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.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of Respondent Luana S. Hammer, R.T.R., to practice as a radiographer in the state of Wisconsin (license number 6567-142), and her right to apply to renew that license, 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://dspsmonitoring.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 20th of January, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Kristin P. Fredrick
Administrative Law Judge