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

In the Matter of the Disciplinary Proceedings
Against Nola M. Tyrrell, L.P.N., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0008453**

Division of Legal Services and Compliance Case No. 20 NUR 304

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 13 day of April, 2023.

Handwritten signature of Robert W. Santman in black ink.

Member
Board of Nursing



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

In the Matter of Disciplinary Proceedings Against
NOLA M. TYRRELL, L.P.N., Respondent

DHA Case No. SPS-22-0059
DLSC Case No. 20 NUR 304

PROPOSED DECISION AND ORDER

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

Nola M. Tyrrell
N11657 520th St.
Wheeler, WI 54772

Wisconsin Board of Nursing
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services,
Division of Legal Services and Compliance, by:

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

PROCEDURAL HISTORY

On September 21, 2022, the Department of Safety and Professional Services, Division of Legal Services and Compliance (Department), filed and served the Notice of Hearing and the Complaint on Nola M. Tyrrell, L.P.N. (Respondent), by both certified and regular first-class mail, consistent with Wis. Admin. Code § SPS 2.08 and Wis. Stat. § 440.11(2). The Respondent failed to file an answer within twenty days from the date of service, as required by Wis. Admin. Code § SPS 2.09(4).

The Administrative Law Judge (ALJ) scheduled a telephonic prehearing conference for November 3, 2022 at 11:00 a.m. Notice of the conference was sent to both parties. The Respondent did not appear.

On November 3, 2022, the Department moved for default based on the Respondent's failure to file an answer to the Complaint and failure to appear at the prehearing conference, pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

On November 9, 2022, the ALJ issued a Notice of Default against the Respondent and ordered the Department to file a recommended proposed decision and order by December 23, 2022.

FINDINGS OF FACT

Facts As Alleged in the Complaint

1. The Respondent Nola M. Tyrrell, L.P.N., is licensed in the state of Wisconsin as a licensed practical nurse, having license number 305569-31, first issued on November 12, 2004, and current through April 30, 2021.¹ Pursuant to Wis. Stat. § 440.08, the Respondent maintains the right to apply to renew her license through April 30, 2026.

2. The Respondent's most recent address on file with the Department is N11657 520th Street, Wheeler, Wisconsin 54772.

3. At all times relevant to this proceeding, the Respondent was employed as a licensed practical nurse at a nursing home in Chippewa Falls, Wisconsin (Facility).

4. On July 15, 2020, the Respondent was charged with six counts of Identity Theft-Financial Gain, a felony in violation of Wis. Stat. § 943.201(2)(a), and one count of Theft-False Representation > \$10,000-\$100,000, a felony in violation of Wis. Stat. § 943.20(1)(d), in Chippewa County Circuit Court Case No. 2020CF000451 (Chippewa County Case).

5. According to the Criminal Complaint, the Respondent misappropriated a Facility patient's (Patient B.S.) debit card and made a series of fraudulent transactions and ATM withdrawals from November 2019 through May 2020 that totaled over \$40,516.

6. The Chippewa Falls Police Department obtained photographs and video surveillance footage from the retail establishments and ATMs where the transactions took place and Facility staff identified the person making the purchases and withdrawals as the Respondent.

7. When confronted with the photographic evidence by the Chippewa Falls Police Department, the Respondent admitted to the transactions. While the Respondent claimed Patient B.S. had given her his debit card and PIN to make some purchases, she ultimately admitted most of the purchases were for her own use.

8. On April 21, 2021, the Respondent was convicted of one count of Theft-False Representation > \$10,000-\$100,000, a felony in violation of Wis. Stat. § 943.20(1)(d), and one count of Misappropriate ID Info-Avoid Penalty, a felony in violation of Wis. Stat. § 943.201(2)(b), in the Chippewa County Case. The Respondent was sentenced to 30 days in jail,

¹ Pursuant to 2021 Wis. Act 10, all health care provider licenses will remain active until thirty days after the end of the declared national COVID-19 emergency.

five years of probation, and ordered to pay restitution to Patient B.S. The Judgment of Conviction was filed with the Court on June 7, 2021.

Facts Related to Default

9. On September 21, 2022, the Department served the Notice of Hearing and Complaint on the Respondent at her last known address on file with the Department by both certified and regular first-class mail and email.

10. On September 26, 2022, the Respondent received and signed for the Notice of Hearing and Complaint.

11. The Respondent failed to file an answer to the Complaint.

12. After the expiration of the 20-day period to file an answer, the ALJ scheduled a telephone prehearing conference for November 3, 2022 at 11:00 a.m. The ALJ sent notice of the conference by U.S. mail to the Respondent. The notice ordered the Respondent to contact the ALJ no later than November 2, 2022 to provide her current telephone number. The notice also stated that if the Respondent failed to appear at the scheduled conference, default judgment may be entered against her.

13. The Respondent failed to contact the ALJ by November 2, 2022, with her current telephone number.

14. The Respondent failed to appear at the prehearing conference on November 3, 2022. The ALJ attempted to contact the Respondent at her telephone number on file with the Department but received an automated message indicating the recipient was not accepting messages. The ALJ also attempted to email the Respondent at her email address on file with the Department. The Respondent did not respond to the email or call the ALJ.

15. On November 3, 2022, the Department moved for default based on the Respondent's failure to file an answer to the Complaint and failure to appear at the prehearing telephone conference, pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

16. On November 9, 2022, the ALJ granted the Department's motion and issued a Notice of Default against the Respondent. The ALJ ordered the Department to file a recommended proposed decision and order by December 23, 2022. The Department timely filed its recommended proposed decision and order.

DISCUSSION

Jurisdictional Authority

The Wisconsin Board of Nursing (Board) has the authority to impose discipline against the Respondent. Wis. Stat. §§ 441.07(1c) and (1g). The undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1). Wis. Admin. Code § SPS 2.10(2).

Default

The Department properly served the Notice of Hearing and Complaint upon Respondent by mailing copies to her at her last known address. Wis. Stat. § 440.11(2). Service by mail is complete upon mailing. Wis. Admin. Code § SPS 2.08(1).

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, 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 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 on November 3, 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 may be made, and an order may be entered, based on the Complaint.

Violations

Following an investigation and disciplinary hearing, if the Board determines that a nurse has committed one or more violations of the Wisconsin statutes or administrative rules adopted by the Board, or if the Board finds that a nurse has committed misconduct or unprofessional conduct, it may revoke, limit, or suspend her license, or reprimand her. Wis. Stat. § 441.07(1g)(b) and (d).

Wisconsin Administrative Code § N 7.03 sets out grounds for taking disciplinary action against a nurse. Those grounds include:

- (2) Violating or aiding and abetting a violation of any law substantially related to the practice of nursing or being convicted of any crime substantially related to the practice of nursing. A certified copy of a judgment of conviction is prima facie evidence of a violation.

...

- (4) Misconduct or abuse, including any of the following:

- (a) Soliciting, borrowing, misappropriating, obtaining, or attempting to obtain money or property from a patient or a patient’s family.

The Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license by misappropriating money from a patient by using his debit card for personal transactions totaling over \$40,000 without his authorization and then being convicted of two felonies for her conduct, in violation of Wis. Admin. Code § N 7.03(2) and (4)(a).

Discipline

The Department recommends that the Respondent's license to practice as a licensed practical nurse in the state of Wisconsin, and her right to renew such license, be revoked. Because the Respondent has been found in default, and because the recommended discipline is consistent with the purposes articulated in *Aldrich*, 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. *State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976).

The recommended discipline is consistent with the purposes articulated in *Aldrich*. The allegations in the Complaint are serious. The Respondent stole a patient's debit card and used it to make a series of fraudulent transactions and ATM withdrawals that totaled over \$40,516. Her conduct was not isolated to one or two fraudulent transactions; the Respondent used the patient's debit card to benefit herself over a period of six months without his knowledge or permission. The Respondent's actions caused her to be arrested and convicted of two felony crimes for theft and misappropriation and sentenced to 30 days in jail and five years of probation.

The Respondent violated her duty as a nurse, which was to protect and care for her patient. She disregarded the rules of professional conduct as well as the laws in place to protect public health and welfare and cannot be trusted to practice nursing lawfully. The possibility of Respondent's rehabilitation cannot be ascertained in part because of the Respondent's failure to respond to the Complaint, participate in these proceedings, and provide any defense for her actions. Revoking her license will also deter other credential holders from engaging in similar conduct by sending a message that such conduct by a licensee is intolerable.

The Wisconsin Supreme Court has acknowledged that "the purpose of licensing statutes is not to benefit those persons licensed to practice under the statutes, but rather to protect the public by the requirement of a license as a condition precedent to practicing in a given profession. The granting of a license pursuant to such a statute has been characterized as a privilege." *Gilbert v. State Medical Examining Board*, 119 Wis. 2d 168, 188, 349 N.W. 2d 68 (1984). "Such statutes are grounded in the state's police power to protect the public welfare through safeguarding the life, health, and property of its citizens." *Id.* "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). Revoking Respondent's license protects the public by preventing Respondent from practicing nursing and having access to vulnerable patients again.

The recommended discipline is consistent with Board precedent. *See In the Matter of Disciplinary Proceedings Against Stephanie Y. Gaines, L.P.N.*, Order Number 0004686 (April 29, 2016) (right to renew nursing license was revoked after Respondent was convicted of two

felonies for forgery and unauthorized use of a patient's personal information to obtain money);² see also *In the Matter of Disciplinary Proceedings Against Kathleen M. Turner, L.P.N.*, Order Number 0003277 (June 12, 2014) (right to renew nursing license was revoked after Respondent was convicted of three counts of Theft-Movable Property and she failed to participate in the hearing process).³

Based upon the facts of this case and the factors set forth in *Aldrich*, the revocation of the Respondent's license pursuant to the terms and conditions of the Order below is reasonable and 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; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *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 a 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*, LS0802183CHI (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.

Considering the above factors, it is appropriate for the Respondent to pay the full costs of the investigation and of this proceeding. The Respondent defaulted and the serious factual allegations identified in the complaint were deemed admitted. The Respondent was convicted of stealing a patient's debit card and using it continually for an extended period for her own benefit without the patient's knowledge, a crime substantially related to the practice of nursing. The Department has proven both grounds for discipline against the Respondent: misappropriating money from a patient and being convicted of that crime. Finally, the Respondent failed to provide current contact information to the ALJ, failed to appear at the prehearing conference, and failed to file an answer to the Complaint or otherwise provide any argument regarding the allegations brought against her license to practice as a licensed practical nurse in Wisconsin.

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 matter 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 this proceeding, as determined pursuant to Wis. Admin. Code § SPS 2.18.

² This decision is available online at: <https://online.drl.wi.gov/decisions/2016/ORDER0004686-00012624.pdf>

³ This decision is available online at: <https://online.drl.wi.gov/decisions/2014/ORDER0003277-00009966.pdf>.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing (Board) has jurisdiction over this matter pursuant to Wis. Stat. § 441.07(1c) and (1g).
2. The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Stat. § 440.20(5)(a) and Wis. Admin. Code § N 7.03(4)(a) by misappropriating money from a patient by using his credit card for personal transactions totaling over \$40,00 without his authorization.
3. The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Stat. § 440.20(5)(a) and Wis. Admin. Code § N 7.03(2) by being convicted of two felonies for her conduct misappropriating more than \$40,000 from a patient.
4. As a result of the above conduct and violations, the Respondent is subject to discipline pursuant to Wis. Stat. §§ 441.07(1g)(b) and (d), and Wis. Admin. Code § N 7.03.
5. Revocation of the Respondent's license is reasonable, appropriate, and consistent with the purpose of *Aldrich*, 71 Wis. 2d at 209 (1976).
6. Revocation of the Respondent's right to renew her practical nurse license is reasonable, appropriate, and consistent with the purposes of *Aldrich*.
7. 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:


1. The Respondent's license to practice as a licensed practical nurse in the state of Wisconsin (number 305569-31), and her right to renew such license, is hereby REVOKED.
2. The Respondent shall 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

3. 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 the 26th of January, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Tel. (608) 266-7709
Email: Angela.ChaputFoy@wisconsin.gov

By: 

Angela Chaput Foy, Administrative Law Judge