

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 Nichole M. Dorn, L.P.N., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0008529**

Division of Legal Services and Compliance Case Nos. 20 NUR 337 and 20 NUR 564

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 4th day of May, 2023.

Al. Rehmeier

DSPS Chief Legal Counsel,
Delegated

Member
Board of Nursing



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
NICHOLE M. DORN, L.P.N., Respondent.

DHA Case No. SPS-22-0037
DLSC Case Nos. 20 NUR 337
and 20 NUR 564

PROPOSED DECISION AND ORDER

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

Nichole M. Dorn, L.P.N.,
721B Crawford Dr.
Cottage Grove, WI 53527

Nichole M. Dorn, L.P.N.,
3230 Coronet Ct.
Spring Hill, FL 34609

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

PROCEDURAL HISTORY

On June 1, 2022, the Wisconsin Department of Safety and Professional Services, Division of Legal Services and Compliance (Department) filed a Notice of Hearing and Complaint and served Nichole M. Dorn (Respondent). Administrative Law Judge (ALJ) Angela Chaput Foy was assigned to the matter.

The Respondent failed to file an answer in the 20 days following service of the Complaint. The ALJ scheduled a telephone prehearing conference for July 7, 2022, and notice

was sent to both parties. The Respondent failed to appear for the prehearing conference on July 7, 2022, and the ALJ could not reach her by phone or email. The ALJ granted the Department's motion 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 Wis. Admin. Code § HA 1.07(3)(c).

On July 11, 2022, the Respondent called and emailed the ALJ and, as part of the email exchange, she asked for an opportunity to show good cause to be relieved from the effect of the finding of default. The ALJ scheduled a status conference for July 22, 2022, to provide the Respondent with that opportunity. At the status conference, the ALJ found good cause for the Respondent's failure to file an answer and failure to appear at the prehearing conference, vacated the Notice of Default, and ordered the Respondent to file a written answer to the Complaint by August 15, 2022.

On August 16, 2022, the Respondent sent an email "In response to complaint," and at the prehearing conference on September 15, 2022, confirmed that it was her Answer. The ALJ issued a scheduling order and set the matter for hearing on December 15, 2022.

On September 28, 2022, the Department filed a Motion Requesting Judicial Notice. On October 4, 2022, the Department filed a Motion for Judgment on the Pleadings or, in the alternative, Summary Judgment. A briefing schedule was included in the September 19, 2022 scheduling order, which required response briefs to be filed on or before October 27, 2022. No response was received from the Respondent.

On November 18, 2022, the ALJ ruled on the Department's motions. Summary judgment was granted in favor of the Department on two of the allegations; specifically, the ALJ found that the Respondent had violated Wis. Stat. § 440.12(1), for tax delinquency under Wis. Stat. § 73.0301, and Wis. Admin. Code § N 7.03(1)(g) for violation of an order of the Wisconsin Board of Nursing (Board). Summary judgment was denied for other allegations raised in the Complaint, leaving alleged violations of Wis. Admin. Code § N 7.03(5)(g), § N 7.03(6)(f), and § N 7.03(8)(e) to be litigated.

On November 23, 2022, the Department requested to move forward with a Proposed Decision and Order for the matters upon which judgment had been granted and remove the remaining dates from the litigation calendar. The ALJ granted this request and ordered that the Department file a recommended proposed decision and order no later than December 16, 2022. The Respondent was provided until December 30 to file a response or objection. The Department timely filed its submission. No response or objection was received from the Respondent.

FINDINGS OF FACT

Findings of Fact 1-7 are taken from the "Undisputed Facts" as found in the "Decision and Order on Motion for Judgment on the Pleadings and Motion for Summary Judgment" issued by the ALJ in this matter.

1. The Respondent, Nichole M. Dorn, L.P.N., (DOB: March 2, 1984) is licensed in the state of Wisconsin to practice practical nursing, having license number 316642-31, first issued on March 11, 2013, and expired on April 30, 2021.

2. The Respondent's address is 3230 Coronet Ct., Spring Hill, FL 34609. The Respondent moved from Wisconsin to Florida during the pendency of this case. Her previous addresses on file with the Department included 721B Crawford Drive, Cottage Grove, Wisconsin 53527 and 5226 Ridge Oak Drive, Madison, Wisconsin 53704.

3. On May 9, 2019, the Department received certification from the Wisconsin Department of Revenue under Wis. Stat. § 73.0301, that the Respondent was liable for delinquent taxes. On February 19, 2021, the Department again received certification from the Wisconsin Department of Revenue, under Wis. Stat. § 73.0301, that the Respondent was liable for delinquent taxes. On August 23, 2021, the Respondent's license was deactivated, and any potential license renewal denied pending resolution of the tax delinquency pursuant to Wis. Stat. § 440.12(1). As of the date of filing the Complaint, June 1, 2022, the Department had not received notice from the Wisconsin Department of Revenue or the Respondent that the tax delinquency had been resolved, nor had the Respondent attempted to renew her license.

4. On October 8, 2020, the Board issued Order # 7039, which required the Respondent to successfully complete four hours of education on the topic of proper medication administration and three hours of education on the topic of ethics and professionalism. The Respondent was given six months to complete the ordered education. As of the date of filing the Complaint, June 1, 2022, the Respondent had not completed the education ordered in Order # 7039.

5. In November 2020, the Department received a complaint from the Respondent's employer alleging that the Respondent falsified her timesheets and was paid for hours she did not work.

6. Also in November 2020, the Department received a complaint alleging that the Respondent's newborn daughter (Patient J.S.) displayed signs of withdrawal after her birth on December 25, 2016 because of the Respondent's use of opioids.

7. On June 1, 2022, the Department filed the Complaint herein against the Respondent alleging that the above-stated conduct violated laws and regulations of her license and subjected her to discipline. The Respondent filed an Answer. The undersigned ALJ scheduled the matter for a class 2 proceeding under Ch. 227, Wis. Stats., for December 15, 2022.

8. On October 4, 2022, the Department filed a Motion for Judgment on the Pleadings or, in the alternative, Summary Judgment arguing:

- a. That there remained no genuine issue of material fact that the Respondent had been certified as delinquent on her taxes, in violation of Wis. Stat. § 440.12(1), and was subject to license revocation as a matter of law;
- b. That there remained no genuine issue of material fact that the Respondent failed to comply with Board ordered education, in violation of Wis. Admin. Code § N 7.03(1)(g), and was subject to discipline as a matter of law;

- c. That there remained no genuine issue of material fact that the Respondent submitted false information in the course of an investigation, in violation of Wis. Admin. Code § N 7.03(5)(g), and was subject to discipline as a matter of law;
- d. That there remained no genuine issue of material fact that the Respondent was unable to practice safely by reason of alcohol or other substance use, in violation of Wis. Admin. Code § N 7.03(6)(f), and was subject to discipline as a matter of law; and
- e. That there remained no genuine issue of material fact that the Respondent obtained and/or possessed a drug without lawful authority, in violation of Wis. Admin. Code § N 7.03(8)(e), and was subject to discipline as a matter of law.

9. On November 18, 2022, the ALJ issued a decision on the Department's motion, finding that the Department was entitled to summary judgment on the issues of revocation of the Respondent's license for tax delinquency and the Respondent's violation of the Board's order for education. The ALJ denied the motion for summary judgment on the remaining matters.

10. On November 23, 2022, the Department requested to move forward with a Proposed Decision and Order for the matters upon which judgment had been granted, withdraw the remaining allegations in the Complaint, and remove the remaining dates from the litigation calendar.

11. On November 29, 2022, the ALJ granted the Department's request and ordered that the Department file a recommended proposed decision and order no later than December 16, 2022. The Respondent was provided until December 30 to file a response or objection. The Department timely filed its submission. No response or objection was received from the Respondent.

DISCUSSION

Jurisdictional Authority

The Wisconsin Board of Nursing (Board) has jurisdiction over this matter pursuant to Wis. Stat. § 441.07(1g). The Department "may promulgate rules defining uniform procedures to be used by the department . . . and all examining boards and affiliated credentialing boards attached to the department or an examining board, for... conducting [disciplinary] hearings." Wis. Stat. § 440.03(1). These rules are codified in Chapter SPS 2 of the Wisconsin Administrative Code.

The Division of Hearings and Appeals has authority to issue the proposed decision and order pursuant to Wis. Stat. § 227.43(1m) and Wis. Admin. Code § SPS 2.10(2).

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 or any rule adopted by the board under the authority

of this subchapter,” or has “[v]iolated any term, provision, or condition of any order of the board,” it may “revoke, limit, suspend or deny a renewal of a license of a licensed practical nurse....” Wis. Stat. §§ 441.07(1g)(b) and (d). Additionally, pursuant to Wis. Stat. § 440.12(1), the Department *shall* revoke a credential if the Department of Revenue certifies under Wis. Stat. § 73.0301 that the credential holder is liable for delinquent taxes. (Emphasis added.)

Conduct that is grounds for the Department to take disciplinary action on the Respondent’s license includes, but is not limited to:

- a. Certification by the Department of Revenue, under Wis. Stat. § 73.0301, that the respondent is liable for delinquent taxes. Wis. Stat. § 440.12(1).
- b. Violation of any term, provision, or condition of any order of the board. Wis. Admin. Code § N 7.03(1)(g).

Summary judgment was granted on the issue of the Respondent’s tax delinquency. The Respondent has twice been certified by the Department of Revenue as liable for delinquent taxes on May 9, 2019 and February 19, 2021. On August 23, 2021, the Department deactivated the Respondent’s license and any potential license renewal pending resolution of the tax delinquency. Pursuant to Wis. Stat. § 440.12, the Department shall revoke a credential and deny an application for an initial credential or renewal in instances of certified tax delinquency. As of the date of this order, the Respondent remains liable for delinquent taxes.

Summary judgment was also granted on the issue of the Respondent’s violation of a Board order by failing to complete ordered education. The Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code. § N 7.03(1)(g), by violating any term, provision, or condition of any order of the Board. On October 8, 2020, as a result of the disciplinary investigation in DLSC Case No. 19 NUR 167, the Board issued Order # 7039, which required the Respondent to successfully complete four hours of education on the topic of proper medication administration and three hours of education on the topic of ethics and professionalism. Order #7039 required the Respondent to complete the ordered education within six months. As of the date of this order, the Respondent has not completed the ordered education.

By engaging in conduct qualifying as grounds for taking disciplinary action on her license, along with the Respondent’s failure to respond or object to the Department’s motions or recommended proposed orders, the Respondent is subject to discipline pursuant to Wis. Stat. §§ 440.12(1), 441.07(1g)(b) and (d), and Wis. Admin. Code § N 7.03.

Discipline

The Department recommends that the Respondent’s license to practice practical nursing in Wisconsin be revoked. Given that a finding under Wis. Stat. § 440.12(1) of tax delinquency mandates revocation, because the recommended discipline is consistent with the purposes articulated in *State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976) and other case law, and because the Respondent has not objected to or responded to the recommended discipline, I adopt the Department’s recommendation.

The three purposes of discipline in a professional misconduct case are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *Id.*

The recommended discipline is consistent with the purposes articulated in *Aldrich*, and it is mandated by statute based on the violations. The unambiguous language of Wis. Stat. § 440.12 includes, “the department *shall*... revoke a credential” if the Department of Revenue certifies that a credential holder is liable for delinquent taxes. (Emphasis added.) As the Respondent has a delinquent tax liability, certified by the Department of Revenue, revocation of her credential is mandatory.

Rehabilitation is not likely with lesser discipline. This is not the Respondent’s first instance of misconduct before the Board. The Respondent’s license to practice practical nursing was previously denied due to a tax delinquency under Wis. Stat. § 73.0301. Additionally, the Respondent was ordered to complete seven total hours of remedial education by April 8, 2021 in DLSC Case No. 19 NUR 167. More than three years later, the tax delinquency has not been resolved and the ordered education has not been completed. Promoting rehabilitation is one of the purposes of discipline, but prior action by the Board has been unsuccessful.

The recommended discipline protects the public from other potential instances of misconduct. The Respondent’s prior disregard of state law and Board authority supports revocation of the Respondent’s license. 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).

Revocation of the Respondent’s license also deters other nurses licensed in Wisconsin from engaging in similar conduct. Wisconsin nurses must understand the authority of the Board and their responsibility to comply with Wis. Stat. chs. 440 and 441 and Wis. Admin. Code ch. N 7. Licensees should be on notice that revocation of their license to practice nursing is a potential consequence of serious violations of applicable law. Thus, the recommended discipline will act as a deterrent to other nurses who engage in similar conduct.

Revocation is also in line with Department precedent. *See In the Matter of Disciplinary Proceedings Against Gregory Daniels, D.C.*, Order Number LS0611011RAL (June 14, 2007) (License revoked pursuant to Wis. Stat. § 440.12 as licensee was certified liable for delinquent taxes under Wis. Stat. § 73.0301).¹ *See In the Matter of Disciplinary Proceedings Against John A. Nilsson, D.C.*, Order Number LS0509021CHI (November 20, 2006) (Department recognition that a certified tax delinquency under Wis. Stat. § 73.0301 requires the revocation of a credential under Wis. Stat. § 440.12).²

Based upon the facts of this case, the requirement of Wis. Stat. §440.12, the factors set forth in *Aldrich*, and prior Department decisions, revocation of the Respondent’s Wisconsin practical nursing license is required and appropriate. The provisions of Wis. Admin. Code § N 2.41(4) do not apply to the Respondent for reinstatement of her revoked credential.

Costs

¹ <https://online.drl.wi.gov/decisions/2007/ls0611011ral-00072117.pdf>

² <https://online.drl.wi.gov/decisions/2006/ls0509021chi-00072250.pdf>

The Board has discretion 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 these proceedings. The Department declined to pursue additional pled allegations once adjudication of matters sufficient to justify appropriate discipline was rendered. The Department's restraint limited additional litigation costs. The level of discipline sought based on the violations is revocation, the most serious discipline. The Respondent delayed these proceedings by failing to appear at scheduled conferences and failing to respond or responding untimely, resulting in increased time and expense. The Respondent's misconduct began with disregard of a prior Board order in DLSC Case No. 19 NUR 167, and continued with certified tax delinquencies. The Respondent continued to violate Wis. Stat. chs. 440 and 441 and Wis. Admin. Code ch. N 7 despite Board and Department efforts to address her actions. The Respondent has refused to acknowledge the authority of the Board and the orders of this tribunal. To date, the Respondent has ignored licensure actions and lesser limitations. Accordingly, the Respondent's misconduct is serious and warrants assessment of full costs.

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. Such factors warrant assessment of full costs. Therefore, it is appropriate for the Respondent to pay the full costs of the investigation and prosecution in this matter, as determined pursuant to Wis. Admin. Code § SPS 2.18.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing (Board) has jurisdiction over this matter pursuant to Wis. Stat. § 441.07(1g).
2. The Respondent was found liable for a tax delinquency by the Department of Revenue, and therefore violated Wis. Stat. § 440.12(1).

3. The Respondent violated the Board of Nursing's Order #7039, which therefore violated Wis. Admin. Code § N 7.03(1)(g).
4. As a result of these violations, the Respondent is subject to discipline pursuant to Wis. Stat. § 441.07.
5. Revocation of the Respondent's practical nurse license in the state of Wisconsin is mandatory given the tax delinquency. Wis. Stat. § 440.12
6. Revocation of the Respondent's practical nurse license in the state of Wisconsin is reasonable and appropriate, consistent with Board precedent and the purposes articulated in *Aldrich* in response to her failure to comply with Board orders. See Wis. Stat. § 441.07(1g).
7. It is appropriate for the 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 practical nurse license of the Respondent (license no. 316642-31) is REVOKED, effective on the date the final decision is signed by the Board.

IT IS FURTHER ORDERED that the Respondent shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18.

Dated at Madison, Wisconsin, on 24th of January, 2023.

STATE OF WISCONSIN
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By: 

Angela Chaput Foy
Administrative Law Judge