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Before the
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against Amber L. Opdahl, R.N., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0008554**

Division of Legal Services and Compliance Case No. 21 NUR 175

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 18th day of May, 2023.

Ali. Rehman ~~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 Amber L. Opdahl, R.N., Respondent.

DHA Case No. SPS-22-0062
DLSC Case No. 21 NUR 175

PROPOSED DECISION AND ORDER

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

Amber L. Opdahl, R.N.
6006 Brown's Pkwy, Apt #6
Love's Park, IL 61111

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

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

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

PROCEDURAL HISTORY

On October 13, 2022, the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), served the Notice of Hearing and the Complaint in this matter on the Respondent, Amber L. Opdahl, R.N., by mailing copies to her address on file with the Department via both certified and regular mail, pursuant to Wis. Stat. § 440.11(2) and Wis. Admin. Code § SPS 2.08. The Respondent failed to file an answer to the Complaint as required. Wis. Admin. Code § 2.09(4).

The Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for November 28, 2022, at 10:00 am. Notice of the conference was sent to both parties. The Respondent did not appear.

On November 29, 2022, the ALJ issued a Notice of Default and Order against the Respondent and ordered the Division to file a recommended Proposed Decision and Order by January 11, 2023.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-11 are set forth in the Division's Complaint against the Respondent filed in this matter.

1. Respondent Amber L. Opdahl, R.N., is licensed in the state of Wisconsin to practice as a registered nurse, having license number 233845-30, first issued on February 14, 2017. This license expired on February 28, 2018 and has not been renewed. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to apply for renewal upon payment of a fee until February 27, 2023.
2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is 6006 Brown's Parkway, Apartment 6, Love's Park, Illinois 61111.
3. Respondent also holds a licensed practical nurse certificate (certificate no. P55578) and registered nurse license (license no. 136966) issued by the Iowa Board of Nursing.
4. On December 2, 2020, the Iowa Board of Nursing issued an Order against Respondent's Iowa licenses based on findings that Respondent was convicted of a crime related to nursing, unlawfully possessed and used marijuana and methamphetamine, and failed to appear at a contested case hearing related to these violations. The Order revoked Respondent's Iowa licenses and prohibited her from applying for reinstatement of the licenses for at least one year.
5. The Order listed the following criminal convictions in Iowa and found they were all related to nursing:
 - a. August 27, 2018: Aiding and abetting the possession of a firearm by a felon, a felony, in Blackhawk County District Court docket no. FECR220247.
 - b. September 24, 2018: Theft 4th degree, a misdemeanor, in Blackhawk County District Court docket no. SRCR220518.
 - c. October 11, 2019: Harassment 3rd degree, a misdemeanor, in Mitchell County District Court docket no. SMCR026081.
6. The Order also found that Respondent tested positive for marijuana on seven separate dates in 2017-2019, one of which she also tested positive for methamphetamine/amphetamines.

7. On April 1, 2021, the Department received notice that Respondent's Iowa licenses were revoked.

8. On April 1, 2021, the Department e-mailed a request for information related to the revocation to Respondent's e-mail address on file with the Department. Respondent did not respond.

9. On April 9, 2021, the Department e-mailed a request for information to Respondent's e-mail address on file with the Department. Respondent did not respond.

10. On April 21, 2021, the Department mailed a request for information to Respondent's mailing address on file with the Department. Respondent did not respond.

11. On June 9, 2021, the Department e-mailed another request for information to an e-mail address for Respondent found on Lexis Nexis. Respondent did not respond.

12. On July 1, 2021, the Department e-mailed another request for information to Respondent's e-mail address on file with the Department as well as the e-mail address found on Lexis Nexis. Respondent did not respond.

13. On July 27, 2021, the Department mailed a request for information via certified mail to Respondent's address on file with the Department. The letter was returned as undeliverable.

14. On August 16, 2021, the Department called Respondent at the phone number on file with the Department. Respondent did not answer, and the Department left a voicemail. Respondent did not respond.

Facts Related to Default

1. On October 13, 2022, the Division served the Notice of Hearing and the Complaint on the Respondent at her last known address on file with the Department by both certified and regular mail.

2. The Respondent did not file an answer to the Complaint.

3. Following the expiration of the 20-day period to file an Answer, the ALJ scheduled a telephone prehearing conference for November 28, 2022. The ALJ sent notice of the conference by U.S. mail to the Respondent. The notice also ordered the Respondent to contact the ALJ no later than November 27, 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.

4. The Respondent failed to contact the ALJ by November 27, 2022, with her current telephone number.

5. At the prehearing conference held on November 28, 2022, the Respondent failed to appear, and the ALJ was unable to reach the Respondent. The Division had no current telephone number, email to the Respondent's email address on file was returned as undeliverable, and mail to the Respondent's mailing address on file was returned as undeliverable. The Respondent has not contacted the ALJ at the telephone number or email address provided by the ALJ.

6. On November 28, 2022, the Division moved for default based on the 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).

7. On November 29, 2022, the ALJ issued a Notice of Default and Order against the Respondent and ordered the Division to file and serve a recommended proposed decision and order no later than January 11, 2023.

8. 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). 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 this proposed decision and order pursuant to Wis. Stat. §§ 227.43(1m) and 441.51(3)(e), and Wis. Admin. Code § SPS 2.10(2).

Default

The Division properly served the Notice and Complaint upon the Respondent by mailing a copy to her address of record with the Department. Service by mail is complete upon mailing. Wis. Admin. Code § SPS 2.08(1) and Wis. Stat. § 440.11(2). The Division of Hearings and Appeals also properly served the Respondent with the Notice of Prehearing Conference by mailing it to her address of record with the Department. Wis. Admin. Code § HA 1.03.

An answer to a complaint must be filed within 20 days from the date of service of the complaint. Wis. Admin. Code § 2.09(4). If a respondent "fails to answer as required by s. SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and

the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence.” Wis. Admin. Code § SPS 2.14.

For a telephone prehearing conference, the ALJ may find a failure to appear grounds for default if any of the following conditions exist for more than 10 minutes after the scheduled time for prehearing conference: (1) the failure to provide a telephone number to the ALJ after it had been requested; (2) the failure to answer the telephone; (3) the failure to free the line for the proceeding; and (4) the failure to be ready to proceed with the prehearing conference as scheduled. Wis. Admin. Code § HA 1.07(3)(c).

Here, the Respondent failed to file an answer to the Complaint, failed to appear at the prehearing telephone conference scheduled for November 28, 2022, failed to provide a telephone number to the ALJ after it had been requested, and failed to be ready to proceed with the prehearing conference as scheduled. Therefore, the Respondent is in default, and findings and an order may be entered based on the Complaint.

Violations

The Board has the authority to impose discipline against the Respondent pursuant to Wis. Stat. §§ 441.07 and 441.51(3)(d). Following an investigation, if the Board determines that a nurse has committed “[o]ne or more violations of this subchapter,” or has committed “[m]isconduct or unprofessional conduct,” it may “revoke, limit, suspend or deny a renewal of a license of a registered nurse” Wis. Stat. § 441.07(1g)(b) and (d).

Conduct that is grounds for the Board to take disciplinary action includes:

- a. Having a license to practice nursing or a nurse licensure compact privilege to practice denied, revoked, suspended, limited, or being otherwise disciplined in another state, territory, or country. Wis. Admin. Code § N 7.03(1)(b).
- b. After a request of the Board, failing to cooperate in a timely manner, with the Board’s investigation of a complaint filed against a license holder. Wis. Admin. Code § N 7.03(1)(c).
- c. Being convicted of any crime substantially related to the practice of nursing. Wis. Admin. Code § N 7.03(2).
- d. Being unable to practice safely by reason of alcohol or other substance use. Wis. Admin. Code § N 7.03(6)(f).
- e. Obtaining, possessing, or attempting to obtain or possess a drug without lawful authority. Wis. Admin. Code § N 7.03(8)(e).

The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(1)(b) by having a license to practice nursing revoked in another

state. The Respondent's Iowa license to practice nursing was revoked by the Iowa Board of Nursing (Iowa Board).

The 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. The Respondent failed to respond to any of the Division's attempts to contact her during the Division's investigation of this case. In addition, the Respondent failed to appear and participate in these proceedings. The Respondent's actions, or lack thereof, demonstrate a repeated failure to cooperate in a timely manner with the Board's investigation.

The Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code § N 7.03(2) by being convicted of a crime substantially related to the practice of nursing. The Respondent was convicted of aiding and abetting the possession of a firearm by a felon, theft, and harassment. The serious nature of these crimes relates directly to the Respondent's judgment, honesty, and character, all of which are important aspects of nursing practice.

The 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 because of alcohol or other substance use. The Respondent's Iowa nursing license was revoked, in part, due to unauthorized use of controlled substances. Substance use, especially when unauthorized and severe enough to provide a basis for license revocation, calls a nurse's ability to practice safely into question. In this case, the Respondent failed to contest the Iowa Board's findings that the Respondent used controlled substances without authorization.

The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(8)(e) by possessing a drug without lawful authority. The Respondent's Iowa Nursing license was revoked, in part, due to unauthorized possession of controlled substances. The Respondent failed to contest the Iowa Board's findings.

By engaging in conduct qualifying as grounds for taking disciplinary action on her license, the Respondent is subject to discipline pursuant to Wis. Stat. §§ 441.07(1g)(b), (c) and (d), 441.51(3)(d), and Wis. Admin. Code § N 7.03.

Discipline

The Division recommends that the Respondent's license to practice as a registered nurse in Wisconsin, her right to apply to renew such license, and any privilege to practice in Wisconsin pursuant to a multistate license issued by another state, be suspended indefinitely. The Respondent may petition the Board at any time for a stay of the suspension. If the Board chooses to stay the suspension, it may also impose conditions or limitations on the Respondent's license that it deems appropriate to protect the health, safety, and welfare of patients and the public, provided they are related to the misconduct proven in this matter and serve the three purposes of discipline as outlined in *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976). Because the

Respondent has been found in default, and because the recommended discipline is consistent with the purposes articulated in *Aldrich*, I adopt the Division'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.*

In this case, the Department received information that the Respondent's license in another jurisdiction was revoked for possessing and using controlled substances without authorization, being convicted of crimes related to the practice of nursing and failing to participate in the Iowa Board's investigation related to that matter. The Respondent subsequently failed to cooperate with the Board's investigation of the matter. While the Respondent's rehabilitation¹ may be possible, this can only be determined if the Respondent cooperates with the Board's investigation. The Division's recommendation accounts for this by allowing the Respondent to petition the Board to stay the suspension once the Respondent provides information requested by the Department in relation to this matter.² Depending on the information provided, the Board may grant a petition to stay the suspension and impose conditions on the Respondent's license that promotes rehabilitation, such as providing verification that the Respondent has not engaged in any further criminal activity or that she has not practiced while impaired by any intoxicants.

The Division's recommended discipline also protects the public from other potential instances of misconduct by ensuring that the Respondent cannot practice nursing while the Board cannot adequately monitor her competence. "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 suspension is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984). The Respondent committed crimes related to the practice of nursing and has since failed to communicate with the Department despite multiple requests for information. Therefore, it has not been possible to ensure that the Respondent is safely practicing nursing. As such, an indefinite suspension is appropriate to protect the public.

¹ In this case, "rehabilitation" includes ensuring the Respondent does not practice while impaired, no longer engages in conduct that endangers safety, and no longer ignores the Board's authority.

² Department investigations involving alleged impaired practice include, among other things, questions to the respondent's employer regarding any concerns of practicing while under the influence of drugs or alcohol or a request for other evidence that the respondent does not have any AODA concerns. Investigations involving convictions of crimes related to nursing include, among other things, questions concerning the circumstances surrounding the crime, any mitigating factors related to the respondent's involvement, and whether the respondent engaged in any counseling or other rehabilitative efforts related to the conviction.

The recommended discipline also deters other credential holders from engaging in similar conduct. Licensees should be on notice that they cannot avoid disciplinary action by simply refusing to cooperate with the Board. Suspension of the Respondent's license to practice in Wisconsin will serve to deter others from committing similar violations.

The recommended discipline is consistent with Board precedent. *See In the Matter of the Disciplinary Proceedings Against Linda L. Polanco, R.N.*, Order Number 0007563 (August 25, 2021) (Board suspended respondent's license indefinitely for failing to cooperate with the Board's investigation and proceedings and required completion of education in order to petition for license reinstatement);³ *In the Matter of the Disciplinary Proceedings Against Amanda Nabbefeldt, R.N.*, Order Number 0007516 (August 12, 2021) (Board suspended respondent's license indefinitely for failing to cooperate with the Board's investigation and proceedings);⁴ *In the Matter of the Disciplinary Proceedings Against Nancy M. Mokaya, R.N.*, Order Number 0008013 (June 9, 2022) (Board suspended respondent's license indefinitely for failing to cooperate with the Board's investigation and proceedings and Board granted ability to impose conditions and/or limitations on the license upon stay of suspension).⁵

Based upon the facts of this case, the factors set forth in *Aldrich*, and prior Board decisions, an indefinite suspension of the Respondent's license to practice in Wisconsin as well as her right to apply to renew that license, and any privilege to practice in Wisconsin pursuant to any multistate license, is 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. *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.

³ *In the Matter of the Disciplinary Proceedings Against Linda L. Polanco, R.N.*, Order Number 0007563.

⁴ *In the Matter of the Disciplinary Proceedings Against Amanda Nabbefeldt, R.N.*, Order Number 0007516.

⁵ *In the Matter of Disciplinary Proceedings Against Nancy M. Mokaya, R.N.*, Order Number 0008013.

It is appropriate for the Respondent to pay the full costs of the investigation and prosecution of these proceedings. Because the Respondent defaulted and did not file an answer, the factual allegations identified in the Division's Complaint were deemed admitted. The Respondent's misconduct includes failure to cooperate with the Board's investigation. This violation is a clear disregard for the Board's authority. The level of discipline sought is an indefinite suspension with the Respondent's ability to petition the Board to terminate the suspension, a substantial level of discipline responsive to the violations in this matter. The Respondent failed to cooperate with the Division's investigation and this disciplinary process by failing to respond to the Division's requests for information, failing to answer the complaint, and failing to appear for the prehearing conference. The Respondent has not offered any acceptable justification for her actions. Such conduct demonstrates disregard for the authority of the Board and disregard for her duties as a nurse.

Finally, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. It would be unfair to impose the costs of pursuing discipline in this proceeding on those licensees who have not engaged in misconduct.

Therefore, it is appropriate for 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(1c) and (1g).
2. The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(1)(b) by having her license to practice nursing revoked by the Iowa Board of Nursing. In another state.
3. The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(1)(e) by failing to cooperate in a timely manner with the Board's investigation.
4. The Respondent engaged in conduct qualifying as grounds for taking disciplinary action on her license pursuant to Wis. Admin. Code § N 7.03(2) by being convicted of a crime substantially related to the practice of nursing, specifically, aiding and abetting the possession of a firearm by a felon, theft, and harassment, which is related to nursing because it reflects on her honesty and character.
5. The 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 because of alcohol or other substance use as found by the Iowa Board.

6. The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(8)€ by possessing a drug without lawful authority as found by the Iowa Board.
7. As a result of the above violations, revocation of the Respondent's license is reasonable and appropriate. Wis. Stat. §§ 441.07(1g)(b) and (d), and Wis. Admin. Code § N 7.03.
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:

1. The Respondent's license to practice as a registered nurse in Wisconsin (license no. 233845-30) and her right to apply to renew that license, as well as any privilege to practice in Wisconsin under a multi-state license issued by another state, is **SUSPENDED** for an indefinite period.
2. The Respondent may petition the Board for a **STAY** of the suspension by contacting the Department Monitor and providing any information requested by the Board or its designee in relation to this matter in a timely fashion.
3. The Board or its designee may stay the suspension upon determination that the Respondent has cooperated fully with the Department and provided any information requested by the Board or Department in relation to this matter. The Board or its designee may impose conditions and/or limitations on the Respondent's privilege to practice in Wisconsin that it deems appropriate to protect the health, safety, and welfare of patients and the public. Any conditions or restrictions must relate to the misconduct proven in this matter and must serve one of the following purposes: promoting the Respondent's rehabilitation, protecting the public from other instances of misconduct, or deterring other credential holders from engaging in similar conduct.
4. Whether the Board or its designee grants the Respondent's petition for a stay of suspension, and/or imposes any conditions and limitations on the Respondent's privilege to practice in Wisconsin, is within its sole discretion and is not subject to appeal.
5. In the event the Respondent violates any term of this Order, or any subsequent related Order, while a stay of suspension is in place, the Board or its designee may remove the stay, without further notice of hearing, until the Respondent has complied with the terms of the Order. The Board or its designee may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph 2.

6. The Respondent shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18.

7. Petitions, payments of costs (made payable to Department of Safety and Professional Services), and any other requests for information or submissions related to this Order shall be submitted to the Department Monitor at:


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

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

8. The terms of this Order are effective on the date the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin on February 16, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Telephone: (414) 227-4025
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Email: Angela.ChaputFoy@wisconsin.gov

By: 

Angela Chaput Foy
Administrative Law Judge