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

In the Matter of the Disciplinary Proceedings
Against Christina E. Riel, R.N., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0008555**

Division of Legal Services and Compliance Case No. 22 NUR 229

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.

Al. Rohmeyer **DSPS Chief Legal Counsel,**
Member Delegatee
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings
Against Christina E. Riel, R.N., Respondent

DHA Case No. SPS-22-0063
DLSC Case No. 22 NUR 229

PROPOSED DECISION AND ORDER

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

Christina E. Riel
N6034 Hwy 73
Ingram, WI 54526

Christina E. Riel
N6028 Joseph St.
Ingram, WI 54526

Christina E. Riel
P.O. Box 243
Glen Flora, WI 54526

Wisconsin Board of Nursing
P.O. Box 8366
Madison, WI 53766

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 19, 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 Respondent Christina E. Riel, 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).

Following expiration of the 20-day period to file an Answer, the undersigned Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for December 1, 2022 at 9:30 am. The Respondent did not appear.

On December 5, 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 no later than January 4, 2023. The Division timely filed its submission.

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 Christina E. Riel, R.N., is licensed in the state of Wisconsin to practice as a registered nurse with multistate privileges pursuant to the Nurse Licensure Compact (Compact), having license number 191526-30, first issued on July 19, 2012, and current through February 28, 2022. Pursuant to Wis. Stat. § 440.08, Respondent maintains the right to apply to renew her license through February 28, 2027.

2. Respondent's most recent address on file with the Department is N6034 Highway 73, Ingram, Wisconsin 54526.¹

3. On December 20, 2021, Respondent was convicted in Rusk County Circuit Court Case Number 2018CF000183 of one count of Endangering Safety by Use of Dangerous Weapon, a misdemeanor, in violation of Wis. Stat. § 941.20(1)(a). The judgment of conviction was entered the same day.

4. Respondent did not report the misdemeanor conviction referenced in paragraph 3 to the Board of Nursing (Board) or Department.

5. On March 31, 2022, the Department received a complaint alleging Respondent engaged in professional misconduct by practicing nursing while under the influence of drugs.

6. On March 31, 2022, the Department, on behalf of the Board, emailed a request for information related to the complaint to Respondent's email address on file with the Department. Respondent did not respond.

¹ This was the address at the time the complaint was filed. On November 17, 2022, after the ALJ made the default finding in this case, Respondent changed her address with the Department, through the Division of Professional Credential Processing, to P.O. Box 243, Glen Flora, Wisconsin 54526.

7. On April 7, 2022, the Department, on behalf of the Board, emailed a second request for information related to the complaint to Respondent's email address on file with the Department. Respondent did not respond.

8. On April 14, 2022, the Department, on behalf of the Board, mailed a request for information related to the complaint to Respondent's mailing address on file with the Department. Respondent did not respond.

9. On May 5, 2022, the Department, on behalf of the Board, mailed a request for information related to the complaint to Respondent at P.O. Box 243, Hawkins, Wisconsin 54530, the address for Respondent listed in the court records for Rusk County Circuit Court Case Number 2018CF000183. On May 9, 2022, this request was returned to the Department by the U.S. Postal Service.

10. On May 23, 2022, the Department investigator, on behalf of the Board, left a voicemail message at Respondent's telephone number on file with the Department and sent an email to Respondent's email address on file with the Department. Respondent responded via email from the email address on file with the Department, stating she would send a full response to the complaint via fax that day. Respondent did not send an additional response.

11. On July 7, 2022, the Department, on behalf of the Board, sent a subpoena requesting information related to the complaint via certified mail to Respondent's address on file with the Department and to P.O. Box 243, Hawkins, Wisconsin 54530. Both subpoenas were returned to the Department as undeliverable.

Facts Related to Default

12. On October 19, 2022, the Division served the Notice of Complaint on the Respondent at her address as indicated in the Division's Complaint and Notice of Hearing by both certified and regular mail.

13. The Respondent did not 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 1, 2022.

15. Notice of the scheduled prehearing conference was sent to both parties via regular mail, consistent with Wis. Admin. Code § HA 1.03. The Respondent's Notice was sent to her address as indicated in the Division's Complaint and Notice of Hearing. The prehearing conference Notice also instructed the Respondent to contact the ALJ with a telephone number at which the Respondent could be reached for the conference no later than November 30, 2022. The Respondent did not contact the ALJ.

16. At the prehearing conference held on December 1, 2022, the ALJ attempted to reach the Respondent at her telephone number on file with the Division. The Respondent did not answer the telephone. The ALJ left a voicemail for Respondent indicating that Respondent should contact the ALJ at the telephone number provided by 10:00 am. The ALJ followed up via email and advised the Respondent that if she did not respond by 10:00 am, the Division may move for default.

against her. The Respondent did not return the ALJ's phone call and has not otherwise contacted the ALJ.

17. 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).

18. On December 5, 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 4, 2023.

19. 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(1e) 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 the 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 shall 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 § 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 December 1, 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 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. Failing to respond, to the satisfaction of the Department, credentialing board, or other board in the Department, within 30 days to a request for information from the Department, credentialing board, or other board in the Department in connection with an investigation of alleged misconduct of the credential holder. Wis. Stat. § 440.20(5)(a).
- 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. Failing to notify the Board of a felony or misdemeanor in writing within 48 hours after the entry of the judgment of conviction, including the date, place, and nature of the conviction or finding. Wis. Admin. Code § N 7.03(1)(h).
- d. Being convicted of any crime substantially related to the practice of nursing. Wis. Admin. Code § N 7.03(2).

The Division alleged that 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(1)(c) by failing to cooperate in a timely manner with the Board’s investigation. It is uncontroverted that 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 thus demonstrate a repeated failure to cooperate in a timely manner with the Board’s investigation.

Further, the Division alleges that the Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(1)(h) by failing to notify the Board of a felony or misdemeanor in writing within 48 hours after the entry of the judgment of conviction. Based upon the uncontested facts set forth in the Division’s Complaint, the Respondent was convicted of Endangering Safety by Use of Dangerous Weapon, a misdemeanor, and a judgment of conviction was entered on December 20, 2021. By not reporting this conviction to the Department as required, the Respondent is subject to discipline under Wis. Admin. Code § 7.03(1)(h).

Finally, the Division alleges that the Respondent’s conviction for Endangering Safety by Use of a Dangerous Weapon constitutes grounds for taking disciplinary action on her license

pursuant to Wis. Admin. Code § N 7.03(2). The Division asserts that the Respondent's conviction involves an act which is incompatible with and directly related to the practice of professional nursing, which by definition includes "care of the ill, injured, or infirm" under Wis. Stat. 441.001(4). The Division further states that nurses are expected to not only prevent further harm from coming to their patients, but to actively treat and rehabilitate them, as opposed to endanger another person's safety. The Division's complaint does not offer any specific facts underlying the criminal conviction; thus, I am not able to draw any conclusion that the Respondent's conviction is directly related to her practice as a nurse absent speculating as to same. Accordingly, I do not find that the Division has set forth sufficient facts to find that the Respondent's conduct is subject to discipline under Wis. Admin. Code § N 7.03(2).

In summary, the Division has established grounds for taking disciplinary action on the Respondent's license based upon her failure to cooperate with the Department and the Board's investigation and due to her failure to report her criminal conviction within 48 hours as required. Therefore, the Respondent is subject to discipline pursuant to Wis. Stat. §§ 441.07(1g)(b) and (d), 441.51(3)(d), and Wis. Admin. Code § N 7.03.

Discipline

The Division recommends that the Respondent's practice as a registered nurse in Wisconsin and any privilege to practice in Wisconsin pursuant to a multistate license, 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). As identified in the order below, 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.*

In this case, the Department received a complaint that the Respondent allegedly practiced nursing while impaired by drugs. Furthermore, the Respondent was convicted of a crime which involved endangering another's safety and subsequently failed to participate in the Board's investigation related to that conviction. While the Respondent's rehabilitation² 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.³ Depending on the information provided, the Board may grant a petition to

² In this case, "rehabilitation" includes ensuring Respondent does not practice while impaired, no longer engages in conduct that endangers safety, and no longer ignores the Board's authority.

³ 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.

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 a crime 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.

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);⁴ *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);⁵ *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).⁶

Based upon the facts of this case, the factors set forth in *Aldrich*, and prior Board decisions, an indefinite suspension of Respondent's license to practice in Wisconsin 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*

⁴ *In the Matter of the Disciplinary Proceedings Against Linda L. Polanco, R.N.*, Order Number 0007563.

⁵ *In the Matter of the Disciplinary Proceedings Against Amanda Nabbefeldt, R.N.*, Order Number 0007516.

⁶ *In the Matter of Disciplinary Proceedings Against Nancy M. Mokaya, R.N.*, Order Number 0008013.

of Regulation & Licensing, Pharmacy Examining Board, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. In previous orders, Boards have considered the following factors when determining if all or part of the costs should be assessed against the Respondent: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the level of discipline sought by the prosecutor; (4) the Respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department is a program revenue agency, funded by other licensees; and (7) any other relevant circumstances. See *In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz* (LS0802183 CHI) (Aug. 14, 2008). It is within the Board's discretion as to which of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

It is appropriate for 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. Stat. § 440.20(5)(a) and Wis. Admin. Code § N 7.03(1)(c) by failing to cooperate in a timely manner with the Board's investigation.
3. The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(1)(h) by failing to notify the Board of a felony or misdemeanor in writing within 48 hours after the entry of the judgment of conviction.
4. As a result of the above violations, the Respondent is subject to discipline pursuant to Wis. Stat. §§ 441.07(1g)(b) and (d), 441.51(3)(d), and Wis. Admin. Code § N 7.03.

5. Indefinite suspension of the Respondent's license to practice in Wisconsin and any privilege to practice in Wisconsin pursuant to any multistate license is reasonable and appropriate.
6. 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.
7. 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).

ORDER

For the reasons set forth above, IT IS ORDERED:

1. Respondent's license to practice as a registered nurse in Wisconsin (license no. 191526-30) is **SUSPENDED** for an indefinite period.
2. 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 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 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 Respondent's petition for a stay of suspension, and/or imposes any conditions and limitations on Respondent's privilege to practice in Wisconsin is within its sole discretion and is not subject to appeal.
5. In the event Respondent violates any term of this Order while a stay of suspension is in place, the Board or its designee may remove the stay, without further notice of hearing, until Respondent has complied with the terms of this Order. The Board or its designee may, in conjunction with any removal of any stay, prohibit Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph 2.
6. 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

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

8. Pursuant to Wis. Stat. § 441.51(5)(b), Respondent's multistate licensure privilege to practice in all Compact states besides Wisconsin is deactivated during the pendency of this Order.

9. 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 24th of January, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Telephone: (608) 266-7709
Fax: (608) 264-9885
Email: Kristin.Fredrick@wisconsin.gov

By: _____


Kristin P. Fredrick
Administrative Law Judge