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

In the Matter of the Disciplinary Proceedings
Against Susan Drzewiecki, R.N., Respondent

FINAL DECISION AND ORDER

Order No. **ORDER 0008781**

Division of Legal Services and Compliance Case No. 21 NUR 148

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 19th day of September, 2023.

Aloysius 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 Susan K. Drzewiecki, R.N., Respondent

DHA Case No. SPS-23-0008
DLSC Case No. 21 NUR 148

PROPOSED DECISION AND ORDER

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

Susan K. Drzewiecki, R.N.
N85 W17170 Lee Place
Menomonee Falls, WI 53051

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 February 1, 2023, the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served the Notice of Hearing and the Complaint on the Respondent, Susan K. Drzewiecki, R.N., by both certified and regular mail, consistent with Wis. Stat. § 440.11(2) and Wis. Admin. Code § SPS 2.08. The Respondent failed to file an answer within 20 days from the date of service, as required by Wis. Admin. Code § 2.09(4).

The Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for April 4, 2023. Notice of this prehearing conference was sent to both parties. The Respondent did not appear.

On April 4, 2023, the Division moved for default based on the Respondent's failure to file an answer to the Complaint and failure to appear at the telephone prehearing conference, pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c). 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 May 4, 2023.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-9 are set forth in the Division's Complaint against the Respondent filed in this matter.

1. The Respondent Susan K. Drzewiecki, R.N., is licensed in the state of Wisconsin to practice as a registered nurse, having license number 138731-30, first issued on July 20, 2001, and current through February 29, 2024.¹

2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for the Respondent is N85 W17170 Lee Place, Menomonee Falls, Wisconsin 53051.

3. At all times relevant to this proceeding, the Respondent was employed as the nursing supervisor at a nursing home in Glendale, Wisconsin. (Facility)

4. On October 12, 2020, a 76-year-old female patient (Patient A) was admitted to the Facility and elected to be designated as a "full code," requesting life-saving measures.

5. Patient A's full code designation was documented in Patient A's medical chart.

6. On November 30, 2020, Patient A tested positive for COVID-19. Later that evening, a CNA found Patient A unresponsive and notified an LPN.

7. The LPN responded to Patient A's room, observed that Patient A was pulseless/breathless. However, the LPN did not check Patient A's code status, did not call 911, and did not begin CPR. The LPN notified the Respondent and assumed that the Respondent would take care of the patient.

8. The Respondent did not begin CPR or take any other life-saving measures because she assumed that the LPN would have told her if Patient A was a full code, and any life-saving measures would have been ineffective because Patient A was already dead when she was found unresponsive.

¹ The Respondent's license has multistate privileges pursuant to the Nurse Licensure Compact.

9. On March 18, 2021, the Department received a complaint against the Respondent regarding the above allegations.

Facts Related to Default

10. On February 1, 2023, the Division served the Notice of Hearing and the Complaint on the Respondent at her address by both certified and regular mail.

11. The Respondent did not 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 April 4, 2023. The ALJ sent notice of the conference by U.S. mail and email to the Respondent. The notice ordered the Respondent to contact the ALJ no later than April 3, 2023, 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 April 3, 2023, with her current telephone number.

14. The Respondent failed to appear at the prehearing conference on April 4, 2023. The ALJ was unable to contact the Respondent for the conference. The Respondent did not have a working phone number on file with the Division. The ALJ emailed the Respondent at the email address on file with the Division and the line was held open for 15 minutes. The Respondent did not contact the ALJ.

15. On April 4, 2023, the Division moved for default based on the Respondent's failure to answer the Complaint and failure to appear for the prehearing conference.

16. On April 4, 2023, the ALJ granted the Division's motion and issued a Notice of Default against the Respondent. The ALJ ordered the Division to file a recommended proposed decision and order no later than May 4, 2023. 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 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 last known address. Wis. Stat. § 440.11(2). Service by mail is complete upon mailing. Wis. Admin. Code § SPS 2.08(1). Notice of the prehearing conference was also properly served by mail. *See* 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, 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 on April 4, 2023, 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,” committed “acts which show the registered nurse . . . to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs[,]” 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), (c), and (d).

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

- a. Failing to perform nursing with reasonable skill and safety. Wis. Admin. Code § N 7.03(6)(a).
- b. Departing from or failing to conform to the minimal standards of acceptable nursing practice, which may create an unnecessary risk or danger to a patient's life, health, or safety. Wis. Admin. Code § N 7.03(6)(c).
- c. Failing to treat a patient. Wis. Admin. Code § N 7.03(6)(j).
- d. Failing to provide medically necessary items or services. Wis. Admin. Code § N 7.03(6)(L).
- e. Failing to execute a medical order. Wis. Admin. Code § N 7.03(6)(o).

The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(6)(a) by failing to perform nursing with reasonable skill and safety. The Respondent failed to check Patient A's code status, and did not begin CPR or take any other life-saving measures prior to the patient's death. Instead, the Respondent incorrectly assumed another staff member would have informed her if the patient was a "full code." The Respondent demonstrated a lack of skill and safety by failing to know the patient's code status and failing to even attempt any life-saving intervention.

The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(6)(c) by departing from or failing to conform to the minimal standards of acceptable nursing practice that may create unnecessary risk or danger to a patient's life, health, or safety. The Respondent failed to check the patient's code status, did not begin CPR, and did not take any other life-saving measures when the patient was unresponsive. When a patient is designated as "full code," the standard of care requires life-saving measures be taken regardless of whether the provider believes the patient is already dead. All of these actions, or lack thereof, are below the standards of acceptable nursing practice.

The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(6)(j) for failing to treat a patient. The Respondent failed to perform CPR and other life-saving measures on an unresponsive patient.

The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(6)(L) by failing to provide medically necessary items or services to a patient. Patient A was designated as a "full code" patient, meaning it was necessary to provide life-saving measures such as CPR when she was found unresponsive. However, the Respondent failed to do so.

The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(6)(o) by failing to execute a medical order. Since Patient A was designated as a full code, Facility staff had standing orders to provide CPR or other life-saving measures if Patient A was unresponsive.

By engaging in conduct qualifying as grounds for taking disciplinary action on her license, along with the Respondent's failure to make any argument to the contrary, the Respondent is subject to discipline pursuant to Wis. Stat. §§ 441.07(1g)(b), (c), and (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 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 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 was found in default, and because the recommended discipline is consistent with the purposes 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.*

The recommended discipline is consistent with the purposes in *Aldrich*. The allegations in the Complaint are serious; the Respondent failed to provide necessary life-saving measures to an unresponsive patient. The Division's recommended discipline protects the public from other potential instances of misconduct by ensuring that the Respondent cannot practice nursing until the Board is assured that she can do so competently and safely. "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, the state of 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 failed to practice nursing competently and subsequently failed to participate in disciplinary proceedings. Therefore, it has not been possible to ensure that the Respondent is safely practicing nursing. As such, indefinite suspension is appropriate to protect the public.

While the Respondent's rehabilitation² may be possible in the future, the Respondent has not provided sufficient information to make a specific determination at this time. Because the Respondent failed to participate in these proceedings, the Board cannot determine what rehabilitative measures would be effective at this time, and the failure to participate demonstrates a lack of respect for Board authority. An order that suspends the Respondent's license is

² In this case, "rehabilitation" includes ensuring the Respondent no longer engages in unsafe nursing practice and no longer ignores the Board's authority.

necessary to ensure that the Respondent is practicing safely, and that the Respondent cooperates with the Board.

The recommended discipline also deters other credential holders from engaging in similar conduct. Licensees must be on notice that they cannot avoid disciplinary action by simply refusing to cooperate with the Board. Licensees must cooperate so the Board can determine the appropriate outcome to rehabilitate the licensee while protecting the health, safety, and welfare of the public. Suspension of the Respondent's license to practice nursing 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 the 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 the 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 the 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 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. *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,

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.

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 prosecution of these proceedings. The Respondent defaulted and the factual allegations identified in the Division's Complaint were deemed admitted. The 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 this disciplinary process by 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 the laws applicable to nurses to practice 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 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 has jurisdiction over this matter pursuant to Wis. Stat. § 441.07.
2. The Respondent is in default by failing to answer the Complaint and not being available for the prehearing pursuant to Wis. Admin. Code § HA 1.07(3)(c).
3. The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(6)(a) by failing to perform nursing with reasonable skill and safety.
4. The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(6)(c) by departing from or failing to conform to the minimal standards of acceptable nursing practice that may create unnecessary risk or danger to a patient's life, health, or safety.
5. The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(6)(j) by failing to treat.
6. The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(6)(L) by failing to provide medically necessary items or services.

7. The Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(6)(o) by failing to execute a medical order.
8. As a result of the above conduct, the Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b), (c) and (d), and Wis. Admin. Code § N 7.03.
9. Suspension of the Respondent's license to practice as a registered nurse in Wisconsin, her right to apply to renew that license, and any privilege to practice in Wisconsin pursuant to any multistate license, is reasonable and appropriate.
10. 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.
11. The Division of Hearings and Appeals has authority to issue the proposed decision pursuant to Wis. Stat. § 227.46 and Wis. Admin. Code § SPS 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED:

1. The Respondent's license to practice as a registered nurse in Wisconsin, her right to apply to renew that license, (license no. 138731-30) and any privilege to practice in Wisconsin under a multistate license issued by any Compact state are **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 license to practice in Wisconsin or her right to apply to renew that license is within its sole discretion and is not subject to appeal.

5. In the event the 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 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://dpsmonitoring.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 June 8, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 
Angela Chaput Foy
Administrative Law Judge