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JUL 21 2023

DIV LEGAL SERVICES & COMPLIANCE
DEPT SAFETY & PROFESSIONAL SERVICES



Before the
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against Joseph K. Leonard, R.N., Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER0008782**

Division of Legal Services and Compliance Case No. 21 NUR 284

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 19 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
Joseph K. Leonard, R.N., Respondent

DHA Case No. SPS-23-0018
DLSC Case No. 21 NUR 284

PROPOSED DECISION AND ORDER

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

Joseph K. Leonard, R.N.
2930 Nassau Dr.
Brookfield, WI 53045

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

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

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

PROCEDURAL HISTORY

On March 29, 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 Respondent Joseph K. Leonard, R.N., by both certified and regular mail, consistent with Wis. Stat. § 440.11(2) and Wis. Admin. Code § SPS 2.08. 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 May 2, 2023. Notice of this prehearing conference was sent to both parties. Respondent did not appear. On May 2, 2023, the Division moved for default based on 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 granted the Division's motion and on May 11, 2023 issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order no later than June 9, 2023.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-9 are taken from the Division's Complaint filed against Respondent in this matter.

1. Joseph K. Leonard, R.N. (Respondent), (DOB: November 3, 1970) is licensed in the state of Wisconsin as a registered nurse with multistate privileges pursuant to the Nurse Licensure Compact (Compact), having license number 134018-30, first issued on January 5, 2000, and current through February 29, 2024.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 2930 Nassau Drive, Brookfield, Wisconsin 53045.

3. At all times relevant to this proceeding, Respondent worked as a registered nurse at a home health care agency located in Mukwonago, Wisconsin (Facility).

4. Between February 22, 2021, and March 31, 2021, Respondent falsely documented multiple telehealth visits with a patient (Patient A) as being in-person home visits.

5. The Facility did not bill Patient A's health insurer for visits during this time period.

6. Between February 20, 2020, and March 22, 2020 Respondent falsely documented multiple telehealth visits with another patient (Patient B) as being in-person home visits.

7. The Facility issued a refund check to Patient B's insurer for all of the visits during this time period.

8. On dates during these time periods, Respondent falsified patient documentation including vitals, assessment findings, and patient signatures.

9. On April 9, 2021, Respondent was terminated from his position at the Facility.

Facts Related to Default

10. On March 29, 2023, the Division served the Notice of Hearing and Complaint on Respondent at his last known address on file with the Department by both certified and regular mail.

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

12. After the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for May 2, 2023, at 10:00 a.m. The notice ordered Respondent to contact the ALJ no later than May 1, 2023, and to provide a telephone number at which Respondent may be reached. The notice also stated that if Respondent failed to appear at the scheduled conference, default judgment may be entered against him.

13. Respondent failed to contact the ALJ by May 1, 2023 to provide a telephone number where he could be reached for the prehearing conference.

14. The Division provided the ALJ with a telephone number for Respondent, whereupon the ALJ attempted to contact Respondent but there was no answer and no ability to leave a voicemail. Accordingly, the ALJ sent an email to Respondent instructing him to contact the ALJ by 11:00 a.m., failing which the ALJ would entertain the Division's motion for default judgment against Respondent. Respondent did not contact the ALJ.

15. Based on Respondent's failure to file an Answer to the Division's Complaint, his failure to appear at the May 2, 2023 prehearing conference, and his failure to provide the ALJ with a telephone number at which he could be reached, the Division moved for default judgment pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

16. The ALJ granted the Division's Motion and on May 11, 2023 issued a Notice of Default and Order against Respondent.

17. The ALJ ordered the Division to file, no later than June 9, 2023, a recommended proposed decision and order to include proposed findings of fact, conclusions of law with respect to the violations, recommended discipline and costs.

18. The Division timely filed its recommended proposed decision and order.

DISCUSSION

Jurisdiction 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 Wis. Admin. Code ch. SPS 2

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 his 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.

An administrative law judge (ALJ) may find a failure to appear as 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, Respondent failed to file an answer to the Complaint, failed to appear at the prehearing telephone conference on May 2, 2023, failed to provide a telephone number to the ALJ after it had been requested, failed to respond to the ALJ’s electronic communication requesting contact and warning that failure to respond would result in a default, and failed to be ready to proceed with the prehearing conference as scheduled. Therefore, 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 Respondent pursuant to Wis. Stat. §§ 441.07 and Wis. Admin. Code ch. N 7. 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).

The Board may take disciplinary action against a licensed nurse for “[f]alsifying or inappropriately altering reports, patient documentation, agency records, or other health documents.” Wis. Admin. Code § N 7.03(5)(a). In the present matter the Division has established that the Respondent falsely documented multiple telehealth visits with two separate patients as being in-person visits between February 20, 2020 and March 22, 2020 and February 22, 2021, and March 31, 2021. (Complaint, ¶¶ 4 and 6). Respondent also falsified patient documentation including vitals, assessment findings, and patient signatures. (*Id.* ¶ 8). Based upon the undisputed facts in the Complaint, the Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(5)(a) by falsifying or inappropriately altering reports, patient documentation, agency records, or other health documents.

By engaging in conduct qualifying as grounds for taking disciplinary action on his license, along with Respondent's failure to make any argument to the contrary, Respondent is subject to discipline pursuant to Wis. Stat. §§ 441.07(1g)(b), and (d) and Wis. Admin. Code § N 7.03.

Discipline

The three purposes of discipline in a professional misconduct case are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976).

The Division recommends that 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 Division asserts that a suspension is necessary given Respondent's failure to participate in these disciplinary proceedings; however, the Division suggests that the Respondent may petition the Board at any time for a stay of suspension. Further, the Division requests the additional authority for the Board should it choose to stay the suspension, allowing the Board to impose conditions or limitations on 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 *Aldrich*.

Applying *Aldrich* to this case, I concur with the Division that establishing the Respondent's potential for rehabilitation is difficult given that the Respondent failed to participate in these proceedings. Thus, the Board cannot determine what rehabilitative measures would be effective at this time. An order that suspends the Respondent's license is necessary to ensure that the Respondent is practicing safely, and that the Respondent cooperates with the Board.

The seriousness of the Respondent's conduct cannot be ignored. The Respondent falsely documented multiple telehealth visits with patients and falsified patient vitals, assessment findings, and patient signatures. The Division's recommended discipline protects the public from other potential instances of misconduct by ensuring that Respondent cannot practice nursing until the Board is assured that he 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). Until the Board can ensure that the Respondent is capable of practicing nursing competently and safely, indefinite suspension is appropriate to protect the public.

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 Respondent's license to practice nursing in Wisconsin will serve to deter others from committing similar violations.

The recommended discipline is not only consistent with the purposes in *Aldrich*, but 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);¹ *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);² *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).³

Based upon the facts of this case, the factors set forth in *Aldrich*, and prior Board decisions, the Division's request for an indefinite suspension of Respondent's license to practice in Wisconsin as well as his right to apply to renew that license, and any privilege to practice in Wisconsin pursuant to any multistate license, is reasonable and warranted. Because Respondent was found in default, and because the recommended discipline is consistent with the purposes in *Aldrich*, I adopt the Division's recommendation.

Costs

The Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against 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 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) 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.

Considering the above factors, it is appropriate for Respondent to pay the full costs of the investigation and prosecution of these proceedings. Respondent defaulted and the factual allegations identified in the Division's Complaint were deemed admitted. The discipline sought is an indefinite suspension with Respondent's ability to petition the Board to terminate the

¹ *In the Matter of the Disciplinary Proceedings Against Linda L. Polanco, R.N.*, Order Number 0007563.

² *In the Matter of the Disciplinary Proceedings Against Amanda Nabbefeldt, R.N.*, Order Number 0007516.

³ *In the Matter of Disciplinary Proceedings Against Nancy M. Mokaya, R.N.*, Order Number 0008013.

suspension, a substantial level of discipline responsive to the violations in this matter. Respondent failed to cooperate with this disciplinary process by failing to answer the complaint and failing to appear for the prehearing conference. Respondent has not offered any acceptable justification for his 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 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. 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. Respondent engaged in conduct that constitutes grounds for disciplinary action under Wis. Admin. Code § N 7.03(5)(a) by falsifying or inappropriately altering reports, patient documentation, agency records, or other health documents.
4. As a result of the above conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b), and (d), and Wis. Admin. Code § N 7.03.
5. Suspension of Respondent's license to practice as a registered nurse in Wisconsin, his right to apply to renew that license, and any privilege to practice in Wisconsin pursuant to any multistate license, is reasonable and appropriate.
6. It is appropriate for Respondent to pay the full costs of the investigation and prosecution in this matter pursuant to Wis. Admin. Code § SPS 2.18.
7. 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. Respondent's license to practice as a registered nurse in Wisconsin, his right to apply to renew that license, (license no. 134018-30) and any privilege to practice in Wisconsin under a multistate license issued by any Compact state are **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 license to practice as a registered nurse in the state of Wisconsin, his right to apply for renewal of that license, and any privilege to practice in Wisconsin pursuant to any multistate license granted to Respondent by another Compact state, 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 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 grant Respondent's petition for a stay of suspension, and/or imposes any conditions and limitations on Respondent's license to practice as a registered nurse in Wisconsin, his right to apply for renewal of that license, and any privilege to practice in Wisconsin pursuant to any multistate license granted to Respondent by another Compact state, is within the Board's sole discretion and is not subject to review or 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 the 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.

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://dspsmonitoring.wi.gov>.

7. 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 7 of July, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____



Kristin P. Fredrick
Administrative Law Judge