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Before the
State of Wisconsin
Medical Examining Board

In the Matter of the Disciplinary Proceedings
Against Irene Gurvits, M.D., Respondent.

FINAL DECISION AND ORDER

ORDER 0007323

Order No. _____

Division of Legal Services and Compliance Case No. 20 MED 216

The State of Wisconsin, Medical Examining Board, 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, Medical Examining Board.

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 21 day of April, 2021.

Member
Medical Examining Board



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Irene Gurvits, M.D., Respondent.

DHA Case No. SPS-20-0034
DLSC Case No. 20 MED 216

PROPOSED DECISION AND ORDER

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

Irene Gurvits, M.D.
47 Ridge Drive East, Unit B
Roslyn, NY 11576

Wisconsin Medical Examining Board
P.O. Box 8366
Madison, WI 53707-8366

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

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

PROCEDURAL HISTORY

The proceedings were initiated on November 20, 2020, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal complaint against Respondent Irene Gurvits, M.D., alleging that Respondent engaged in unprofessional conduct by having any credential pertaining to the practice of medicine and surgery or any act constituting the practice of medicine and surgery become subject to adverse determination by any agency of this or another state, in violation of Wis. Admin. Code § Med 10.03(3)(c); and, by failing to cooperate in a timely manner with the Medical Examining Board's (Board) investigation of the complaint filed against her, in violation of Wis. Admin. Code § Med 10.03(3)(g).¹ Administrative Law Judge Kristin Fredrick (ALJ) was assigned to the matter.

¹ Pursuant to Wis. Stat. § 448.02(3)(b), the Wisconsin Medical Examining Board found probable cause to believe Respondent was guilty of unprofessional conduct at its meeting on November 18, 2020.

The Division served Respondent on November 20, 2020, by sending a copy of the Notice of Hearing and Complaint to Respondent's address on file with the Department via certified and regular first-class mail, pursuant to Wis. Admin. Code § SPS 2.08. On December 2, 2020, the Division received the certified mail receipt of the Notice of Hearing and Complaint mailed to Respondent returned by the U.S. Postal Service marked "Return to Sender" and "Unable to Forward." On December 8, 2020, the Division received the Notice of Hearing and Complaint mailed via regular mail from the U.S. Postal Service marked "Return to Sender" and "Not Deliverable as Addressed-Unable to Forward."

Respondent was required to file an Answer 20 days from the date of service, pursuant to Wis. Admin. Code § SPS 2.09(4); however, no Answer was filed. After the expiration of the 20-day time period to file an Answer, on December 14, 2020, the ALJ sent the parties Notice of a telephone prehearing conference scheduled for January 4, 2021. The ALJ sent notice of the conference via U.S. mail to Respondent's last known address on file. The notice ordered Respondent to contact the ALJ no later than January 1, 2021, to provide her current telephone number. The notice also stated that if Respondent failed to appear at the scheduled conference, default judgment may be entered against her. The Notice of Prehearing Conference was similarly returned by the U.S. Postal Service as undeliverable with no forwarding address.

Respondent failed to contact the ALJ with her current telephone number by January 1, 2021, and failed to appear at the prehearing conference held on January 4, 2021. During the prehearing conference, the Division provided the ALJ with Respondent's telephone number on file with the Department. The ALJ called Respondent's number but was unable to leave a voicemail message. The ALJ emailed Respondent and instructed her to contact the ALJ by 11:00 a.m. or she would entertain a motion for default. Respondent did not respond.

On January 4, 2021, the Division moved for default, pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c). On January 4, 2021, the ALJ issued a Notice of Default against Respondent and ordered that the Division file a recommended proposed decision and order by February 3, 2021. The Division timely filed its submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

1. Respondent Irene Gurvits, M.D., is licensed in the state of Wisconsin to practice medicine and surgery, having license number 68955-20, first issued on March 12, 2018, with registration current through October 31, 2021. (Complaint ¶ 1).

2. Respondent's last known address on file with the Department is 47 Ridge Drive East, Unit B, Roslyn, New York 11576. (Complaint ¶ 2)

3. On June 5, 2020, the Division received a complaint from the Federation of State Medical Boards reporting that Respondent's New York medical license had been revoked effective June 3, 2020. (Complaint ¶ 3).

4. On May 26, 2020, the New York State Board for Professional Medical Conduct (NY Board) issued Determination and Order BPMC-20-136 (NY Order) revoking Respondent's license to practice medicine in the state of New York after a hearing was held on May 8, 2020, and Respondent failed to appear. (Complaint ¶ 4).

5. The following charges of professional misconduct against the Respondent were deemed admitted and sustained by the NY Board:

- a. Failing to comply with an order issued pursuant to PHL § 230(7)(a) (Educ. Law § 6530(15));
- b. Practicing the profession while impaired by alcohol, drugs, physical disability, or mental disability (Educ. Law § 6530(7));
- c. Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the licensee's ability to practice (Educ. Law § 6530(8));
- d. Failing to respond within thirty days to written communications from the Department and to make available any relevant records with respect to an inquiry or complaint about the licensee's professional misconduct (Educ. Law § 6530(28)); and,
- e. Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient (Educ. Law § 6530(32)).

(Complaint ¶ 5).

6. The NY Order found that Respondent failed to comply with the Committee on Professional Conduct's direction to submit to a psychiatric examination after evidence was obtained that Respondent withheld prescriptions until patients performed work for her, denied patients' medications after disagreeing with her own previous diagnoses, sent patients text messages, lost medical records, and haphazardly stored medical records without concerns for privacy. (Complaint ¶ 6).

7. The NY Board considered the full spectrum of penalties under PHL § 230-a, including revocation, suspension, probation, censure and reprimand, and the imposition of penalties, and ultimately determined that revocation of Respondent's New York medical license was the only appropriate means of protecting the public from potential harm inflicted by a psychiatrist who is not addressing her own psychiatric problems. (Complaint ¶ 7).

8. On July 9, 2020, the Division, on behalf of the Wisconsin Medical Examining Board, emailed a letter to Respondent at her email address on file with the Department, irenegurvitsmd@yahoo.com, requesting a response to the NY Order. Respondent failed to respond. (Complaint ¶ 8).

9. On September 8, 2020, the Division, on behalf of the Wisconsin Medical Examining Board, emailed Respondent again at her email address on file with the Department, irenegurvitsmd@yahoo.com, requesting a response to the NY Order. Respondent failed to respond. (Complaint ¶ 9).

10. On September 9, 2020, the Division, on behalf of the Wisconsin Medical Examining Board, sent a letter via certified mail to Respondent at her address on file with the Department requesting a response to the NY Order. On September 25, 2020, the U.S. Post Office returned the certified letter to the Division marked not deliverable as addressed. (Complaint ¶ 10).

Facts Related to Default

11. The Notice of Hearing and Complaint were served on Respondent at her last known address on November 20, 2020, by both certified and first-class mail, pursuant to Wis. Admin. Code § SPS 2.08. (Affidavit of Service, ¶¶ 3-4).

12. The Division also emailed a copy of the Notice of Hearing and Complaint to Respondent at her last known email address, irenegurvitsmd@yahoo.com, on November 20, 2020. (Affidavit of Service, ¶ 5).

13. On December 2, 2020, the Division received the Notice of Hearing and Complaint mailed via certified mail from the U.S. Postal Service marked "Return to Sender" and "Unable to Forward." (Affidavit of Service, ¶ 6; Ex. 1).

14. On December 8, 2020, the Division received the Notice of Hearing and Complaint mailed via regular mail from the U.S. Postal Service marked "Return to Sender" and "Not Deliverable as Addressed-Unable to Forward." (Affidavit of Service, ¶ 7; Ex. 2).

15. Respondent failed to file an Answer to the Complaint.

16. After the expiration of the 20-day time period to file an Answer, the Division of Hearings and Appeals (DHA) scheduled a telephone prehearing conference for January 4, 2021. On December 14, 2020, the DHA sent notice of the prehearing conference by U.S. mail to Respondent's last known address on file with the Division. The notice ordered Respondent to contact the administrative law judge (ALJ) no later than January 1, 2021, to provide her current telephone number. The notice also stated that if Respondent failed to appear at the scheduled conference, default judgment may be entered against her. The Notice of Prehearing Conference was returned by the U.S. Postal Service as undeliverable with no forwarding address.

17. The Respondent failed to contact the ALJ by January 1, 2021, with her current telephone number.

18. Respondent failed to appear at the prehearing conference on January 4, 2021. The Division provided the ALJ with Respondent's telephone number on file with the Department. The ALJ called Respondent's number but was unable to leave a voicemail message. The ALJ emailed Respondent and instructed her to contact the ALJ by 11:00 a.m. or she would entertain a motion for default. Respondent did not respond. The Division moved for default, pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

19. On January 4, 2021, the ALJ issued a Notice of Default against Respondent and ordered the Division to file a recommended proposed decision and order by February 3, 2021. According to the Notice, "[i]n light of Respondent's failure to file an Answer to the Complaint and failure to appear for the prehearing conference, the ALJ finds Respondent to be in default."

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

DISCUSSION

Jurisdictional Authority

Pursuant to Wis. Admin. Code § SPS 2.10(2), the undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1).

Default

Under Wis. Admin. Code § SPS 2.14, 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." *See also* Wis. Admin. Code § HA 1.07(3)(c). Allegations in a complaint are deemed admitted when not denied. Wis. Admin. Code § SPS 2.09(3). Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

In the present matter, the Division properly served the Notice of Hearing and Complaint upon Respondent by mailing copies via certified and regular mail to her last known address. Service by mail is complete upon mailing. Wis. Admin. Code § SPS 2.08(1). The Respondent failed to file an Answer to the Division's Complaint within 20 days from the date of service contrary to Wis. Admin. Code § SPS 2.09(4). Respondent also failed to appear at the prehearing telephone conference on January 4, 2021, as ordered by the ALJ. Therefore, Respondent is in default, and findings and an order may be entered on the basis of the Complaint.

Violations

The Board has the authority to impose discipline against the Respondent pursuant to Wis. Stat. § 448.02(3). Following an investigation and disciplinary hearing, if the Board determines that a physician is guilty of unprofessional conduct, it may “warn or reprimand that person, or limit, suspend or revoke any license or certificate granted by the board to that person.” Wis. Stat. § 448.02(3)(c). The Board has the authority to promulgate rules to carry out its purposes. Wis. Stat. § 448.40.

Under Wis. Admin. Code § Med 10.03, “unprofessional conduct” includes the following, or aiding or abetting the same:

...

(3) Law Violations, Adverse Action, and Required Reports to the Board.

(c) Having any credential pertaining to the practice of medicine and surgery or any act constituting the practice of medicine and surgery become subject to adverse determination by any agency or this or another state, or by any federal agency or authority.

...

(g) After a request by the board, failing to cooperate in a timely manner with the board’s investigation of a complaint filed against a license holder. There is a rebuttable presumption that a credential holder who takes longer than 30 days to respond to a request of the board has not acted in a timely manner.

Respondent committed unprofessional conduct based upon the revocation of her New York medical license, which is an adverse determination by an agency of another state, in violation of Wis. Admin. Code § Med 10.03(3)(c).

Respondent also committed unprofessional conduct by failing to cooperate in a timely manner with the Board’s investigation of the complaint filed against her, in violation of Wis. Admin. Code § Med 10.03(3)(g). The Division attempted to contact the Respondent at her last known mailing and email addresses on three separate occasions; but to date, Respondent has never responded. Respondent’s failure to respond impedes the Division’s ability to fully investigate the complaint against her, thus putting public safety at risk.

By violating these laws and rules of professional conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 448.02(3)(c).

Discipline

The Division recommends that Respondent’s license to practice medicine and surgery in Wisconsin be revoked, pursuant to the terms and conditions of the Order below.

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).

Although the Division seeks the harshest discipline under the law, the recommended discipline is consistent with the purposes articulated in *Aldrich*. The charges of professional misconduct in the NY Order were serious and included failing to comply with an order, practicing medicine while impaired by alcohol, drugs, physical disability or mental disability, being a habitual abuser of alcohol or drugs, or having a psychiatric condition which impairs her ability to practice medicine, and failing to respond to the NY Board. Those allegations were deemed admitted and were sustained by the NY Board. The facts upon which those charges were based on were of such a serious nature that the NY Board determined revocation was the only appropriate means of protecting the public from potential harm inflicted by Respondent, a psychiatrist who is not addressing her own psychiatric problems.

The NY Order found that Respondent failed to comply with the Committee on Professional Conduct's direction to submit to a psychiatric examination after evidence was obtained that Respondent withheld prescriptions until patients performed work for her, denied patients' medications after disagreeing with her own previous diagnoses, sent patients text messages, lost medical records, and haphazardly stored medical records without concerns for privacy. Respondent's failure to submit to a psychiatric examination evidences not only Respondent's disregard for the NY Board's authority, but also that Respondent rejected any attempt at her own rehabilitation.

Revocation of Respondent's license protects the public in Wisconsin from other potential instances of misconduct by Respondent. "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). "Occupational licensing requirements follow a legislative determination that the public's health and safety require protection from 'incompetent practitioners.'" *Laufenberg v. Cosmetology Examining Board*, 87 Wis. 2d 175, 184, 274 N.W.2d 618 (1979), citing *Watchmaking Examining Bd. v. Husar*, 49 Wis. 2d at 533. When a license is granted to an individual, the Board 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 Wisconsin Medical Examining Board cannot assure the public of the Respondent's competence to practice medicine, then revocation is appropriate. See *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984). Revoking Respondent's license is consistent with the action taken in New York, the state in which Respondent was practicing, after the NY Board reviewed the evidence at the May 8, 2020 hearing. The Wisconsin Medical Examining Board cannot assure the public that Respondent, who failed to cooperate with legal proceedings in two states and who had her credential to practice medicine become subject to adverse determination in New York, is competent to practice medicine in Wisconsin.

Further, revoking Respondent's license deters other credential holders from engaging in similar conduct. Respondent has totally disregarded the Wisconsin and NY Board's authority as well as the law in place to protect public health and welfare. Therefore, revocation of Respondent's license to practice medicine in Wisconsin is an appropriate response so that other licensees do not commit similar violations.

Finally, the recommended discipline is consistent with Board precedent. *See In the Matter of Disciplinary Proceedings Against Leonard J. Green, III, M.D.*, Order Number 0002508 (June 19, 2013) (Board revoked Respondent's license for having his license revoked in Indiana and the facts contained in the Indiana Order)²; and, *In the Matter of Disciplinary Proceedings Against Prasad V. Yalavarthi, M.D.*, Order Number LS0902251MED (August 19, 2009) (Board revoked Respondent's license for having his license revoked in North Dakota).³

Based upon the facts of this case and the factors set forth in *Aldrich*, revocation of Respondent's license, pursuant to the terms and conditions of the Order below, is warranted.

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; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. In previous orders, Boards have considered the following factors when determining if all or part of the costs should be assessed against 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*, LS0802183CHI (Aug. 14, 2008). It is within the Board's discretion as to which of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

Considering the above factors, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings. Respondent defaulted, and the factual allegations identified in this decision were deemed admitted. Respondent failed to cooperate with the Board's investigation and this disciplinary process by failing to answer the complaint, failing to respond to the ALJ's attempts to contact her, and failing to appear at the prehearing telephone conference as ordered by the ALJ. Respondent also had her medical license become subject to adverse determination by the state of New York.

² See the Order at: <https://online.drl.wi.gov/decisions/2013/ORDER0002508-00008609.pdf>.

³ See the Order at: <https://online.drl.wi.gov/decisions/2009/ls0902251med-00077047.pdf>.

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 this proceeding, as determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of Respondent Irene Gurvits, M.D., to practice medicine and surgery in the state of Wisconsin (license number 68955-20) is hereby REVOKED.

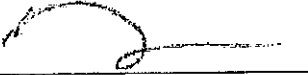
IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

IT IS FURTHER ORDERED that the terms of this Order are effective the date the Final Decision and Order in these matters is signed by the Board.

Dated at Madison, Wisconsin, on this 2nd day of March, 2021.

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

By: 
Kristin P. Fredrick
Administrative Law Judge.