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FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

PAMELA J. SIMON, R.N.,
RESPONDENT.

:
:
:
:
:

FINAL DECISION
AND ORDER
LS9105011NUR

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, makes 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 Board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 8 day of January, 1992

Jacqueline Johnson RN

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	Case No. LS-9105011-NUR
PAMELA J. SIMON, R.N.,	:	
RESPONDENT	:	

PARTIES

The parties in this matter under sec. 227.44, Wis. Stats. and sec. RL 2.036, Wis. Adm. Code, and for purposes of review under sec. 227.53, Wis. Stats. are:

Pamela J. Simon, R.N.
290 Golden West
Shafter, CA 93263

Board of Nursing
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

POSTURE OF CASE

A. This case was initiated by the filing of a complaint with the Board of Nursing on November 4, 1991. A disciplinary proceeding ("hearing") was scheduled for December 9, 1991. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on November 4, 1991 to Ms. Simon at her address on file with the Department's Impaired Professionals Procedure: 1204 Kristi Lane, Tomah, WI 54660. On November 6, 1991 an Amended Notice of Hearing changing the hearing date to December 2, 1991 was prepared and sent to the Tomah address and also to an address obtained from the Post Office: 290 Golden West, Shafter, CA 93263. The notice sent to Tomah was returned on November 19, 1991 with the notation "not at this address per person at the address", but Ms. Simon received the notice sent to Shafter, California on November 9, 1991.

B. Ms. Simon did not file an answer as required by sec. RL 2.09, Wis. Admin. Code.

C. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on December 2, 1991. Ms. Simon did not appear. The Board of Nursing was represented by Attorney Steven Gloe of the Department of Regulation and Licensing's Division of Enforcement. That proceeding forms the basis for this proposed decision.

FINDINGS OF FACT

1. The Respondent, Pamela J. Simon, holds license #102748 to practice as a registered nurse in Wisconsin, originally granted on August 25, 1989.
2. Ms. Simon's latest address on file with the Board of Nursing is 4011 Terrace Drive, La Crosse, WI 54601. As of the date of the hearing, Ms. Simon had not notified the Board of any change of address.
3. Ms. Simon was a participant in the Department's Impaired Professionals Procedure (I.P.P.)
4. Ms. Simon's most recent address on file with the I.P.P. is 1204 Kristi Lane, Apt. 4, Tomah, WI 54660. Ms. Simon has not lived at that address since November 19, 1991 at the latest, and as of the date of the hearing she had not informed the I.P.P. of any change of address. This is a violation of her agreement with the I.P.P., as a participant is required to notify the I.P.P. of any change of address within five days of the change.

Facts taken from exhibit 1:

5. Ms. Simon has a history of chemical dependency.
6. On or about October 17, 1990, Ms. Simon was placed in protective custody by the LaCrosse Police Department, due to a blood alcohol level of .236 and resultant disorientation.
7. On exact dates unknown, but at least during January, 1991, Ms. Simon diverted quantities of controlled substances from her employer for her personal use. These substances included morphine, meperidine hydrochloride (Demerol), diazepam (Valium) and MS Contin.
8. On or about February 15, 1991, Ms. Simon reported for nursing duty in an unfit condition to practice.
9. Ms. Simon violated her agreement with the I.P.P. in not meeting with her therapist as required.
10. Ms. Simon violated her agreement with the I.P.P. in not submitting urine screens as required.
11. Ms. Simon violated her agreement with the I.P.P. by refusing to sign a consent form to allow the I.P.P. monitor to contact her attending physician.
12. Ms. Simon was discharged from the I.P.P. on November 8, 1991.

CONCLUSIONS OF LAW

I. The Board of Nursing has personal jurisdiction over Ms. Simon based on fact #1 above and paragraph A above under "Posture of Case."

II. The Board of Nursing has jurisdiction over the subject-matter of this complaint, under sec. 15.08(5)(c), Wis. Stats, sec. 441.07, Wis. Stats, and ch. N 7, Wis. Admin. Code, based on facts 5, 6, 7, and 8 above.

III. Ms. Simon is in default under sec. RL 2.14, Wis. Admin. Code, based on paragraph B above under "Posture of Case."

IV. By her action on fact 7 above, Ms. Simon obtained a drug other than in the course of legitimate practice in violation of sec. 7.04(2), Wis. Admin. Code. This violation constitutes "misconduct or unprofessional conduct" under sec. 6.05, Wis. Admin. Code and sec. 441.07(d), Wis. Stats.

V. By her action in fact 7 above, Ms. Simon also violated a law substantially related to the practice of professional nursing in violation of sec. 7.04(1), Wis. Admin. Code. This violation constitutes "misconduct or unprofessional conduct" under sec. N 6.05, Wis. Admin. Code and sec. 441.07(d), Wis. Stats.

VI. By her action in fact 8 above, Ms. Simon abused alcohol or other drugs in violation of sec. N 7.03(2), Wis. Admin. Code. This is a violation of minimum practice standards under sec. 6.05, Wis. Admin. Code and a violation of sec. 441.07(c), Wis. Stats.

VII. Based on conclusions of law IV, V, and VI, the Board of Nursing has authority under sec. 441.07, Wis. Stats. to revoke, limit, or suspend Ms. Simon's license.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license issued to respondent, Pamela J. Simon, be revoked, effective 10 days after this order is signed on behalf of the Board of Nursing.

OPINION

Ms. Simon did not file an answer to the complaint and did not appear at the scheduled hearing. She is therefore in default, and under sec. RL 2.14, Wis. Admin. Code, "the board may make findings and enter an order on the basis of the complaint and other evidence."

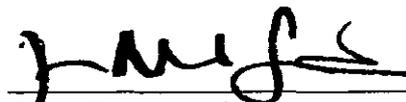
In the hearing, Mr. Gloe established the basic facts underlying the complaint through a certified copy of an agreement signed by Ms. Simon when she entered the I.P.P. There was additional testimony by Lee Ann Cooper, the I.P.P. Program Assistant.

Although Ms. Simon was apparently not prosecuted criminally for diverting controlled substances, the evidence is sufficient to find that in January 1991 she obtained a drug other than in the course of legitimate practice and thereby violated a law substantially related to the practice of professional nursing. In addition, the evidence that on or about February 15, 1991 Ms. Simon reported for nursing duty in an unfit condition to practice is sufficient in the light of other facts adduced here to find that Ms. Simon abused alcohol or other drugs.

Having violated the above professional standards, Ms. Simon has exposed herself to discipline by the Board, which should be imposed in keeping with the well-established purposes of discipline articulated in case law: to rehabilitate the offender, to protect the public by assuring the moral fitness and professional competency of the licensees, and to deter others in the profession from similar conduct. Both by her failure to maintain proper professional standards in the first place, and by her failure subsequently to participate as agreed in the I.P.P., Ms. Simon has demonstrated that she is currently unfit for licensure. All appearances are that Ms. Simon has abandoned her Wisconsin license and her obligations to the Board of Nursing. Her failure to notify the Board of her change of address from LaCrosse, and her failure to notify both the Board and the I.P.P. of her change from Tomah indicate an uncaring attitude toward her professional licensure responsibilities. Without any information from Ms. Simon regarding her present personal situation, the only action which the Board can take to sufficiently protect the public is revocation. Revocation is also an appropriate message to send to other professionals regarding actions such as Ms. Simon's.

This proposed decision does not include a recommendation that Ms. Simon pay the costs involved in this proceeding, although costs would be appropriate due to her lack of cooperation. She did not follow through with her obligations under the I.P.P. She did not file an answer. She did not appear for the scheduled hearing. The costs of the investigation and the hearing might have been avoided if she had maintained some communication with the Board. However, Mr. Gloe stated that the costs involved in the investigation and prosecution of the case have been "minimal" and if the Board accepts the recommended discipline and revokes her license, an order for costs will likely result in a bookkeeping entry which will remain uncollected indefinitely. If the Board were to depart from the recommended discipline, then an order for costs would be appropriate.

Dated December 3, 1991.



John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

BDLS2-494

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Board of Nursing.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Board of Nursing

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Board of Nursing.

The date of mailing of this decision is January 9, 1992.