

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :

FINAL DECISION
AND ORDER
LS950612INUR

MATTHEW JOSEPH CHAMBERLIN, CRNA, :
RESPONDENT. :

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 Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

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 8th day of September 1995.

Pamela A. Major RD

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

| | | |
|----------------------------------|---|---------------------------|
| IN THE MATTER OF DISCIPLINARY | : | |
| PROCEEDINGS AGAINST | : | PROPOSED DECISION |
| | : | |
| MATTHEW JOSEPH CHAMBERLIN, CRNA, | : | (Case No. LS 9506121 NUR) |
| RESPONDENT. | : | |

The parties to this proceeding for the purposes of sec. 227.52, Stats., are:

Matthew Joseph Chamberlin
14205 Country River Lane
Newbury, OH 44065

State of Wisconsin
Board of Nursing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

State of Wisconsin
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

A hearing was held in the above-captioned matter on July 26, 1995. The complainant appeared by Attorney Steven M. Gloe, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708. The respondent, Matthew Joseph Chamberlin, did not appear nor was anyone present to represent him.

On the basis of the entire record, the administrative law judge recommends that the Board of Nursing adopt as its final decision in this proceeding the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Matthew Joseph Chamberlin (D.O.B. 12/4/64) is duly licensed in the state of Wisconsin as a registered nurse, pursuant to license #119175. This license was first granted on March 13, 1995.

2. Mr. Chamberlin's latest address on file with the Department of Regulation and Licensing is 14205 Country River Lane, Newbury, Ohio 44065.

3. On exact dates unknown, but between February 1, 1995 and February 22, 1995, Mr. Chamberlain diverted controlled substances from his employer, Flambeau Hospital, 98 Sherry Avenue, Park Falls, Wisconsin. The controlled substances diverted included Sublimaze™, Alfenta™, Sufenta™ and Demerol™.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this proceeding pursuant to Chapter 441.07, Stats.

2. The respondent is in default in this proceeding due to his failure to file an Answer to the Complaint or appear at the hearing. Accordingly, the Board of Nursing may make findings and enter an order on the basis of the Complaint and other evidence, pursuant to sec. RL 2.14, Wis. Adm. Code.

3. By his diversion of controlled substances, as set forth in the Findings of Fact, the respondent is subject to disciplinary action against his license to practice as a registered nurse in the state of Wisconsin, pursuant to sec. 441.07(1), Stats., and secs. N 7.04(1), (2) and (15), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Matthew Joseph Chamberlin to practice as a registered nurse in the state of Wisconsin shall be, and hereby is, revoked, effective the date of the Final Decision and Order of the Board of Nursing.

FURTHERMORE, IT IS ORDERED that the assessable costs of this proceeding be imposed upon the respondent, Matthew Joseph Chamberlin, pursuant to sec. 440.22, Stats.

OPINION

The respondent, Matthew Joseph Chamberlin, was charged with diverting controlled substances from his employer sometime during the first three weeks in February, 1995. He did not file a written Answer to these allegations nor appear at the evidentiary hearing, although the hearing file indicates that he did receive a copy of the Complaint and Notice of Hearing. Accordingly, complainant's attorney requested that respondent be found in default under sec. RL 2.14, Wis. Adm. Code. The motion was granted.

Given respondent's failure to file an Answer or appear at the hearing, the allegations within the Complaint are accepted as true. Accordingly, it is found that the respondent diverted controlled substances from the hospital at which he was employed as alleged.

The primary issue here is the appropriate discipline, if any to be imposed against respondent's license. In this regard, it must be recognized that the interrelated purposes for applying disciplinary measures are: 1) to promote the rehabilitation of the licensee, 2) to protect the public, and 3) to deter other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis 2d 481, 485 (1969).

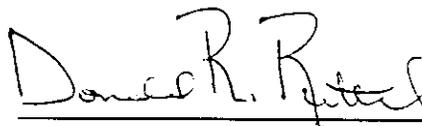
It is recommended that the respondent's license be revoked. The failure of respondent to acknowledge this proceeding through either a written response or participation in the hearing results in the record being barren of any mitigating circumstances such as might justify a discipline other than revocation. The presence of either a defense to the allegations or extenuating circumstances may not be presumed. Nor is the seriousness of the misconduct in diverting controlled substances diminished by respondent's absence.

Furthermore, the determination of appropriate discipline may take into account the fact that he has been previously suspended by the Ohio Board of Nursing in May of this year subsequent to a criminal conviction in that state resulting from his theft of Fentanyl. (See, Exhibit #2).

Given the foregoing factors, as well as respondent's failure to take part in this proceeding, it appears necessary that a revocation be imposed in order to assure that all of the above-cited disciplinary purposes will be fulfilled to the extent possible.

Dated this 31st day of July, 1995.

Respectfully submitted,



Donald R. Rittel
Administrative Law Judge

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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.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN BOARD OF NURSING.

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

SEPTEMBER 12, 1995.

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

| | | |
|----------------------------------|---|--------------------------------|
| IN THE MATTER OF DISCIPLINARY | : | |
| PROCEEDINGS AGAINST | : | AFFIDAVIT OF COSTS OF |
| | : | OFFICE OF BOARD LEGAL SERVICES |
| MATTHEW JOSEPH CHAMBERLIN, CRNA, | : | (Case No. LS 9506121 NUR) |
| RESPONDENT. | : | |

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Donald R. Rittel, being first duly sworn on oath, deposes and states as follows:

1. Your affiant is an attorney licensed to practice law in the state of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.
2. In the course of his employment, your affiant was assigned as the administrative law judge in the above-captioned matter.
3. Set out below are the actual costs of this proceeding for the Office of Board Legal Services in this matter:

ADMINISTRATIVE LAW JUDGE EXPENSE

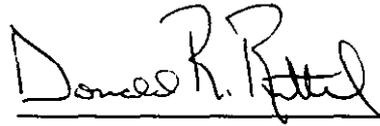
Donald R. Rittel

| <u>DATE</u> | <u>ACTIVITY</u> | <u>TIME SPENT</u> |
|-------------|--------------------------------------|-------------------|
| 7/26/95 | Preparing for and Conducting Hearing | 0.50 hours |
| 7/28/95 | Preparing Proposed Decision | 2.00 hours |
| | TOTAL TIME SPENT | 2.50 hours |

| | |
|---|------------------|
| Total administrative law judge expense for Donald R. Rittel, 2.50 hours @ \$ 43.814 per hour, salary and benefits: | <u>\$ 109.53</u> |
|---|------------------|

| | |
|--|-------------------------|
| TOTAL ASSESSABLE COSTS FOR OFFICE OF BOARD LEGAL SERVICES | <u>\$ 109.53</u> |
|--|-------------------------|

Matthew Joseph Chamberlin, CRNA
Affidavit of Costs
Page 2



Donald R. Rittel
Administrative Law Judge

Sworn to and subscribed before me
this 31st day of July, 1995.



Notary Public, State of Wisconsin
My Commission is Permanent

drr:alj\costs\chamber

04/24/95 Telephone calls

15 min.

TOTAL HOURS

0 hour 35 min.

Total investigator expense for
0 hours and 35 minutes at \$21.00 per hour
(based upon average salary and benefits
for Division of Enforcement investigators) equals:

\$ 12.15

TOTAL ASSESSABLE COSTS

\$ 53.25



Steven M. Gloe
Attorney
Division of Enforcement

Subscribed and sworn to before me this 13th day of October, 1995.



Notary Public
My Commission is permanent