

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST : FINAL DECISION  
: AND ORDER  
Debra Jones, : LS0409022NUR  
Respondent. :  
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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, Veterinary Examining Board.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

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 this 27<sup>th</sup> day of January, 2005.

Jacqueline Johnsrud, RN  
Board Member  
Board of Nursing

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF :  
DISCIPLINARY PROCEEDINGS : PROPOSED FINAL DECISION  
: AND ORDER  
DEBRA M. JONES, LPN, : LS0409022NUR  
RESPONDENT. :  
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PARTIES

The parties to this action for the purposes of s. 227.53 Stats., are:

Debra M. Jones, L.P.N.  
2555A S. 9<sup>th</sup> St.  
Milwaukee, WI 53215

Debra M. Jones, L.P.N.

N3536 Florence Ave  
Montello, WI 53949

Arthur Thexton  
Division of Enforcement  
P. O. Box 8935  
Department of Regulation & Licensing  
Madison, WI 53708-8935

### PROCEDURAL HISTORY

A hearing on the complainant's motion for default and default judgment in the above-captioned matter was held on November 4, 2004, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney Arthur Thexton. The respondent, Debra M. Jones, did not appear and did not file an answer to the complaint.

Based on the entire record of this case, the undersigned administrative law judge recommends that the Board of Nursing adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law, and Order.

### FINDINGS OF FACT

1. Debra Marie Jones (dob: 4/4/65) is and was at all times relevant to the facts set forth herein a practical nurse licensed in the State of Wisconsin pursuant to license #30986. This license was first granted 11/22/91. Her address of record is 2555A S 9<sup>th</sup> St., Milwaukee, WI 53215.
2. On and before 7/14/03, and while employed as a practical nurse at the Allis Care Center, West Allis, WI, respondent diverted the controlled substance oxycodone from a resident's supply, for respondent's personal use.
3. On or before 12/1/02, and while employed as a practical nurse at Fond du Lac Lutheran Home, respondent diverted the controlled substance oxycodone from a resident's supply, for respondent's personal use.
4. On 6/16/99, respondent was convicted in the Circuit Court for Ozaukee County of misdemeanor possession of marijuana and was sentenced to pay a fine and costs of \$360.75; her driver's license was suspended for six months.

### CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter, pursuant to Wis. Stats, § 441.07.
2. The conduct described in the Findings of Fact constitutes unprofessional conduct within the meaning of Wis. Stats, § 441.07(1), and Wis. Admin. Code §§ N 7.03(2) and N 7.04(1), (2) and (15).
3. By failing to file an Answer as required by Wis. Admin. Code RL 2.09, and by failing to appear at the default hearing, the respondent is in default under Wis. Admin. Code RL 2.14, and the Board of Nursing may make findings and enter an order on the basis of the Complaint and the evidence presented at the hearing.
4. The conduct described in the findings of fact constitutes an agency finding within the meaning of Wis. Stats. §50.065.

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the respondent's license for practice as a practical nurse in Wisconsin, number 30986, is REVOKED.

IT IS FURTHER ORDERED that costs of this proceeding shall be assessed against the respondent.

### OPINION

Section RL 2.14 of the Wisconsin Administrative Code provides that a respondent who fails to answer a complaint or fails to appear at a hearing is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent. In this case, the respondent did not file an

answer to the above-captioned complaint, nor did she appear at the scheduled hearing on the department's motion for default and a default judgment. As a result, the motion for a default judgment was granted at the time of the hearing on November 4, 2004.

Following the hearing on this matter, a staff member of the division of enforcement hand delivered to me a copy of correspondence received November 5, 2004, written from the respondent to the prosecuting attorney in this case. (Admitted as Exhibit 8) The date that the respondent wrote the correspondence is not known, however, the postmark indicates it was mailed on November 4, 2004. The department's date stamp of receipt indicates it was received by the department on November 5, 2004.

After review of the respondent's correspondence, I determine that it is not sufficient to set aside my November 4, 2004, order granting a default judgment. The law requires finality in legal proceedings. The law also requires accountability of credential holders by placing the responsibility on them to receive their mail at addresses of record, and moreover, respond in a timely manner to protect their interests. Here, the respondent has not demonstrated a reasonable attempt to meet either duty. Further, no substantive issue is raised in the November 5, 2004, correspondence by the respondent that compels setting aside the default judgment in the interests of justice.

The complaint was issued on September 2, 2004, and mailed to the respondent on September 7, 2004, at her address of record. (Exh. 1- The respondent's address of record was still unchanged as of the date of the November 4, 2004 default hearing.) The respondent never timely responded to the complaint. One month later, October 7, 2004, the undersigned mailed a notice of default hearing to the respondent's address of record. No response was received from the respondent. Almost one month following that the default hearing was held, with no appearance from the respondent, nor responsive papers filed.

Her excuse provided to Attorney Thexton in her November 5, 2004 correspondence indicates that (at some unknown point) she moved to her daughter's address at 860 Wisconsin Ave., Oshkosh. The respondent does not explain why she did not notify this department of her address change, yet claims she put in "a forwarding address of 860 Wisconsin Ave., Oshkosh". This type of sentence raises more questions than it answers, even assuming that the respondent is being forthright that some type of "forwarding" occurred. (Whether at the post office or this department is not clear.) Also, I note that she now has yet another address.

The November 5, 2004, correspondence also does not present any substantive issue that in the interests of justice compels setting aside the default judgment. Regarding paragraph 2 of the complaint, (Finding of Fact, #2) she doesn't address the substance of the allegation, but rather a tangential nonmaterial issue. It is therefore construed as a constructive admission. Regarding paragraph 3 of the complaint, (Finding of Fact, #3), she admits the conduct. Therefore, the factual basis for her unprofessional conduct is firmly established. In the remainder of the letter she outlines her daughter's eviction (as an implied reason for not receiving mail at the Oshkosh address), and her husband's fault for her being convicted of misdemeanor possession of marijuana. (Finding of Fact #4)

It has been requested that the discipline to be imposed be that of revocation. After review of the allegations forming the basis for discipline in this case, that request is appropriate.

The respondent suffers from substance abuse. She has by her own admissions endangered patients by stealing their prescription medications to feed her habit. She has not been responsive in any meaningful way to the administrative process of the Board of Nursing in the investigation and hearing of this matter. Rather, her late correspondence blames others for her difficulties. In short, she is not taking her substance abuse problem seriously, and not taking the duties of a credential holder seriously.

It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*. 41 Wis. 2d 481, 485 (1969).

There is nothing in the record to suggest that imposing any discipline short of revocation would protect the public, have a rehabilitative effect on the respondent, or deter other licensees from engaging in similar conduct.

## Costs

Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Board of Nursing, and that the board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The ALJ's recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

Date: December 7, 2004

William Anderson Black  
Administrative Law Judge