

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
DAYNA L. HINES, L.P.N.,	:	LS0608042NUR
RESPONDENT.	:	

Division of Enforcement Case No. 04NUR317

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

Dated this 25th day of January, 2007.

Marilyn Kaufmann
Member of the Board
Board of Nursing

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	PROPOSED
	:	FINAL DECISION AND
	:	ORDER
DAYNA L. HINES, L.P.N.,	:	LS 0608042 NUR
RESPONDENT	:	04 NUR 317

PARTIES

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

Dayna L. Hines, L.P.N.
1600 Aspen Drive, Apartment 8
Hudson, Wisconsin, 54016.

Jeanette Lytle
Division of Enforcement
Wisconsin Department of Regulation and Licensing
1400 East Washington Ave.
P. O. Box 8935
Madison, WI 53708-8935

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

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on November 9, 2006, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney Jeanette Lytle. The respondent, Dayna L. Hines, 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. Dayna L. Hines, L.P.N., (DOB 02/06/1967) is duly licensed as a practical nurse in the state of Wisconsin (license # 31-30601). This license was first granted on February 6, 1991.

2. Respondent's most recent address on file with the Wisconsin Board of Nursing is 1600 Aspen Drive, Apartment 8, Hudson, Wisconsin, 54016.

3. At all relevant times, Respondent was employed as an L.P.N. by Willow Ridge Healthcare, LLC in Amery, Wisconsin.

4. On or about October 18, 2004, another L.P.N. noted that patient R.J.'s narcotics count was off by one 15 mg MS Contin pill. Thereafter, patient R.J. reported that he had not received his scheduled MS Contin for the three previous nights.

5. Respondent had signed out patient R.J.'s MS Contin doses for the nights in question. Respondent claimed that she had given patient R.J. his MS Contin on those nights. However, patient R.J.'s urine was tested for opiates, and the test was negative, confirming that he had not received his MS Contin as Respondent claimed.

6. Respondent agreed to take a drug test on October 19, 2004, but did not report for the drug test.

7. Respondent has a history of convictions for possession of drug paraphernalia.

8. Respondent completed an alcohol and drug abuse assessment in connection with criminal charges related to this matter, which indicated a history of use of alcohol, marijuana, cocaine, methamphetamines, hallucinogens and pain pills, with a diagnosis of cannabis dependency.

9. On March 24, 2006, Respondent entered a plea of no contest to one count of misdemeanor theft relating to this incident and was given a deferred judgment of conviction.

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 Findings of Fact 4 through 9, constitutes misconduct or unprofessional conduct by the Respondent within the meaning of Wis. Adm. Code §§ N 7.04(2) and the Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Respondent's license for practice as a licensed practical nurse in Wisconsin, number 31-30601, is REVOKED.

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

APPLICABLE LAW

Wis. Admn. Code § N 7.04 (2)

N 7.04 Misconduct or unprofessional conduct. As used in s. 441.07 (1) (d), Stats., "misconduct or unprofessional conduct" means any practice or behavior which violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public. "Misconduct or unprofessional conduct" includes, but is not limited to, the following:

(2) Administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law;

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. As a result, the respondent is in default. The attorney for the complainant moved for an order granting default at the hearing. That motion was granted.

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 has demonstrated extreme disregard for the personal and private health care rights of patients. The respondent's actions were done in a cavalier manner which mocked legitimate medical care. The respondent deprived a patient of needed pain medication by stealing the patient's medication for her own use. She therefore knowingly caused a patient to needlessly suffer. To protect the public, caregivers such as the respondent must undertake their professional duties with the utmost regard for their patients.

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 therefore protect the public, have a rehabilitative effect on the respondent, or deter other licensees from engaging in similar conduct. The respondent has not come forward to show remorse, an explanation, or cooperation with the board in this matter. To not revoke the

respondent's license would instead wrongly signal others to engage in similar conduct. Revocation remains as the only way in which to safeguard the public.

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 8, 2006



William Anderson Black
Administrative Law Judge