

# 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 A DISCIPLINARY  
PROCEEDINGDS AGAINST

TIM N. WIEGELE, R.N.  
RESPONDENT.

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FINAL DECISION  
AND ORDER  
LS0702071NUR

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Division of Enforcement Case Nos. 05NUR021, 06NUR456

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 16<sup>th</sup> day of May, 2007.

Marilyn Kaufmann  
Member of the Board  
Board of Nursing

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	PROPOSED
	:	FINAL DECISION AND ORDER
TIM N. WIEGELE, R.N.,	:	LS 0702071- NUR
RESPONDENT.	:	

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[Division of Enforcement Case #'s 05 NUR 021 & 06 NUR 456]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Tim N. Wiegele, R.N.  
1035 Elm Drive  
Little Chute, WI 54140

Alternate address  
4054 Highway 42/57, Apt. C  
Sturgeon Bay , WI 54235.

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

Board of Nursing  
Department of Regulation & Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

PROCEDURAL HISTORY

This is a disciplinary action against Respondent Tim N. Wiegele, R.N. A Complaint and Notice of Hearing was filed on February 7, 2007 and the same was served on the Respondent by ordinary mail. An evidentiary hearing was scheduled for April 20, 2007. The Respondent has failed to file an answer or other responsive pleading. A hearing in the above-captioned matter was held on April 20, 2007 before Administrative Law Judge Dennis C. Schuh. The Division of Enforcement appeared by Attorney Sandra Nowack. Respondent Tim N. Wiegele failed to appear in person or by his attorney.

FINDINGS OF FACT

1. Tim N. Wiegele, R.N., Respondent, date of birth September 23, 1962, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 104069, which was first granted March 16 1990.
2. Respondent's last address reported to the Department of Regulation and Licensing is 1035 Elm Drive, Little Chute, WI 54140, but he now resides at 4054 Highway 42/57, Apt. C, Sturgeon Bay , WI 54235.
3. During November 2004 through January 11, 2005, Respondent was employed by Aurora Medical Center in

Hartford, Wisconsin, and worked as a registered nurse in the Intensive Care Unit (ICU).

4. On the following occasions, Respondent stole injectable morphine from the supplies on the ICU which he later injected into himself. Morphine is a narcotic analgesic and a schedule II controlled substance, possession of which requires a valid order of an appropriate practitioner. Respondent did not have an order to possess or use the morphine.

- a. November 2, 2004 – Respondent took three 10 mg. vials of injectable morphine.
- b. December 19, 2004 – A 4 mg. syringe of injectable morphine which appeared to have been tampered with and when tested, was found to have been diluted with saline solution from 2.2% morphine to 1.3% morphine.
- c. January 5, 2005 – Respondent took two 4 mg. vials of morphine.
- d. January 10, 2005 – Respondent took two 2 mg. doses of morphine.

5. On January 11, 2005, Respondent was interviewed by his employer as part of their investigation of the missing morphine:

- a. After initially denying that he had taken any of the morphine, Respondent admitted taking the morphine in November.
- b. Respondent denied that he had diluted any morphine doses and said that he would respond to inquiries about the other missing morphine after he had an opportunity to contact and speak with someone from the Employee Assistance Program (EAP).
- c. Respondent was suspended pending further investigation and escorted off the hospital grounds.
- d. When Respondent never contacted EAP and did not respond to his employer's request to complete the investigative interview, Respondent's employment was terminated on January 31, 2005 based on his admission of stealing the morphine in November 2004.

6. In February 2005, Respondent sought treatment at Aurora Behavioral for his drug and alcohol use, but the treatment was not successful.

7. From November 15, 2005 through December 13, 2005, Respondent was treated at the medically monitored residential NOVA Counseling Program in Oshkosh, Wisconsin. He was diagnosed with alcohol dependency and his discharge prognosis was excellent.

8. From September 6, 2006 to present, Respondent has been employed by Door County Memorial Hospital in Sturgeon Bay, Wisconsin as a registered nurse.

9. On December 7, 2006 at 7:00 p.m., Respondent stole two 10 mg./1 ml. syringes of injectable morphine from the unit supply in the Pyxis machine. He injected some of the morphine into himself. Morphine is a narcotic analgesic and schedule II controlled substance, possession of which requires a valid order of an appropriate practitioner. Respondent did not have an order to possess or use the morphine.

10. Another nurse reported to her supervisor Respondent's unusual behavior when he was asked about the morphine. Respondent was interviewed by supervisors during his shift and during the interview:

- a. He was observed to have facial flushing, shaking hands, and the smell of alcohol on his breath, bloodshot eyes and visibly bounding carotid pulses.
- b. He denied any impropriety with the morphine.
- c. He was asked to provide urine for a drug and alcohol screen and initially refused.
- d. Then he admitted having a problem with alcohol and that he had consumed alcohol prior to coming to work that evening.

e. At 8:30 p.m., he provided urine for testing and the test results were positive for opiates and a .03 blood alcohol level.

11. The Wisconsin Department of Regulation and Licensing has not received an answer or other responsive pleading from Tim N. Wiegele.

### CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction to act in this matter, pursuant to Wis. Stat. § 440.03 (1) and 441.07.

2. By failing to file an Answer as required by Wis. Admin. Code § RL 2.09, respondent is in default under Wis. Admin. Code § 2.14, and the facts stated in the Complaint are admitted.

3. The Respondent has received proper notice of this action from the Department of Regulation and Licensing when it mailed a copy of the Notice of Hearing and Complaint to the Respondent's last known address.

4. Respondent, by engaging in the conduct set out in paragraphs 3 through 5 of the Findings of Fact, has violated a law substantially related to practice under his license and has committed misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04 (1), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07 (1) (d).

5. Respondent, by engaging in the conduct set out in paragraphs 3 through 5 of the Findings of Fact, has obtained a drug as prohibited by law, and has committed misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04 (2), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07 (1) (d).

6. Respondent, by engaging in the conduct set out in paragraphs 6 through 10 of the Findings of Fact, has violated a law substantially related to practice under his license and has committed misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04 (1), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07 (1) (d).

7. Respondent, by engaging in the conduct set out in paragraphs 8 through 10 of the Findings of Fact, has obtained a drug as prohibited by law, and has committed misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04 (2), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07 (1) (d).

8. Respondent, by engaging in the conduct set out in paragraphs 8 through 10 of the Findings of Fact, has abused alcohol or other drugs to an extent that such use impaired Respondent's ability to safely or reliably practice as defined by Wis. Adm. Code § N 7.03 (2), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07 (1) (c).

9. 4. The conduct described in the findings of fact constitutes an agency finding within the meaning of Wis. Stats. §50.065 and §146.40.

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license of Tim N. Wiegele R.N., to practice as a Registered Nurse in the State of Wisconsin is hereby REVOKED.

IT IS FURTHER ORDERED that:

2. Respondent shall pay the costs of this proceeding as authorized by Wis.Stat., § 440.22 (2), and Wis. Admin. Code § RL 2.18. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

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

IT IS FURTHER ORDERED that:

3. This Order is effective on the date of its signing.

**OPINION**

**Applicable Law**

Wisconsin Statutes §441.07 provides in part;

**441.07 Revocation.**

(1) The board may, after disciplinary proceedings conducted in accordance with rules promulgated under s. 440.03 (1), revoke, limit, suspend or deny renewal of a license of a registered nurse, a nurse-midwife or a licensed practical nurse, may revoke, limit, suspend or deny renewal of a certificate to prescribe drugs or devices granted under s. 441.16, or may reprimand a registered nurse, nurse-midwife or licensed practical nurse, if the board finds that the person committed any of the following:

- (c) Acts which show the registered nurse, nurse-midwife or licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.
- (d) Misconduct or unprofessional conduct.

**N 7.03 Negligence, abuse of alcohol or other drugs or mental incompetency.**

(1) As used in s. 441.07(1) (c), Stats., "negligence" means a substantial departure from the standard of care ordinarily exercised by a competent licensee. "Negligence" includes but is not limited to the following conduct:

...

(2) "Abuse of alcohol or other drugs" is the use of alcohol or any drug to an extent that such use impairs the ability of the licensee to safely or reliably practice.

**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:

- (1) Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing. A certified copy of a judgment of conviction is prima facie evidence of a violation;
- (2) Administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law;

**RL 2.09 Answer.**

(1) An answer to a complaint shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or

information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

#### **RL 2.14 Default.**

If the respondent fails to answer as required by [s. RL 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. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

The Notice of Hearing and Complaint in this matter were served by mail upon the respondent on February 8, 2007. The respondent failed to respond. No answer or other responsive pleading was received.

On April 20, 2007, complainant made a Motion for Default at the hearing scheduled in this matter. Testimony and evidence supporting the motion was presented.

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 based on 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.

Section RL 2.09(3) of the Wisconsin Administrative Code provides that allegations in a complaint are admitted when not denied in an answer. Therefore, the Board of Nursing can deem the allegations of the complaint against the respondent as admitted based upon the failure to answer.

The complainant introduced evidence showing that the Notice of Hearing and Complaint were mailed to the last-known address of the respondent as indicated in the records of the department and at another address believed to be occupied by the respondent. (Exhibit #1) The complainant introduced as Exhibits #3 and #4, the returned certified mail records showing that delivery was refused or unable to be completed.

The complainant requested a default be granted, that the respondent's license to practice nursing be revoked and imposition of costs. The complainant's motion for default is granted and the relief requested is granted.

Revocation of the respondent's license has been recommended. 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).

The state's purpose in licensing professionals is to protect its citizens. *Strigenz*, 103 Wis.2d at 286, 307 N.W.2d at 667. License revocation is the ultimate means of protecting the public short of fining or imprisonment. *Strigenz v. Department of Regulation and Licensing*, 103 Wis.2d 281, 287, 307 N.W.2d 664 (1981)

The practice of professional nursing involves a unique combination of duties and patient trust. The allegations proven in this case establish that the respondent violated both his duties and the trust of his patients. Protection of the public requires

that those who engage in the nursing profession behave in a manner consistent with that vocation.

As a registered nurse, respondent diverted controlled substances to which he had professional access by virtue of his credential. This fact is sufficient to conclude that he engaged in unprofessional conduct.

The respondent's conduct creates a risk to the health, safety and welfare of the public. The first risk created is that his diversion would lead to impaired practice which could harm patients. The second risk is that such conduct is inevitably tied to the potential of diverting controlled substances from patients to control pain. This second risk would result in untreated patient pain leading to unwarranted suffering. Such conduct demonstrates a disregard of the rights of patients, disregard of the importance of following the laws relating to controlled substance use, and the abuse of the professional privilege granted to him by virtue of his credential.

In many cases, educational and treatment requirements can be imposed to aid in the rehabilitation of the professional. The respondent has presented no evidence that he is interested in rehabilitation. He has presented no evidence in mitigation of the circumstances of his conduct.

There is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on the respondent or that he is even interested in being rehabilitated. The conduct proven demonstrates an indifference to the health, safety and welfare of patients and the public. The failure of the respondent to answer or otherwise participate in this proceeding indicates that least severe avenues that rely upon the participation and cooperation of the respondent will not be useful. Considering his lack of cooperation thus far as an indication of future action, it is unlikely that the respondent will actively engage in other rehabilitative options.

Imposing any discipline less severe than revocation would also wrongly signal others to engage in similar conduct without consequence, thus not constituting proper deterrence. Revocation will therefore act to safeguard the public and deter such conduct by other practitioners.

### 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 on two factors. First, 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 an evidentiary or default hearing, that licensee should bear the costs of the proceeding.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated this \_\_\_\_ day of April, 2007

Respectfully Submitted

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Dennis C. Schuh  
Administrative Law Judge