

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:		FINAL DECISION
PROCEEDINGS AGAINST	:		AND ORDER
	:		LS0812041NUR
SERILDA D. PRESTERL, R.N.,	:		
RESPONDENT.	:		

Division of Enforcement Case No. 08 NUR 078

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 2nd day of April, 2009.

Marilyn Kaufmann
Member
Board of Nursing

**STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING**

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	PROPOSED DECISION
SERILDA D. PRESTERL, R.N.,	:	AND ORDER
RESPONDENT.	:	Case No. LS-0812041-NUR

DOE Case Number 08 NUR 078

PARTIES

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

Complainant:

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Ave.
Madison, WI 53708-8935

Respondent:

Serilda D. Presterl, R.N.
809 Oriole Drive
Streamwood, IL 60107

Disciplinary Authority:

Board of Nursing
1400 East Washington Ave.
Madison, WI 53703

APPLICABLE STATUTES AND RULES

Statutes

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:

- ...
- (b) One or more violations of this subchapter or any rule adopted by the board under the authority of this subchapter.
 - (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.
- ...

440.11 Change of name or address.

- (1) An applicant for or recipient of a credential who changes his or her name or moves from the last address provided to the department shall notify the department of his or her new name or address within 30 days of the change in writing or in accordance with other notification procedures approved by the department.
- (2) The department or any examining board, affiliated credentialing board or board in the department may serve any process, notice or demand on the holder of any credential by mailing it to the last-known address of the holder as indicated in the records of the department, examining board, affiliated credentialing board or board.
- (3) Any person who fails to comply with sub. (1) shall be subject to a forfeiture of \$50.

440.22 Assessment of costs.

...

(2) 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.

Wisconsin Administrative Code

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:

...

(b) An act or omission demonstrating a failure to maintain competency in practice and methods of nursing care:

...

(d) Failing to execute a medical order unless the order is inappropriate and the licensee reports the inappropriate order to a nursing supervisor or other appropriate person:

...

RL 2.08 Service and filing of complaint, notice of hearing and other papers.

(1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

...

RL 2.09 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.

PROCEDURAL HISTORY

A. The Complaint in this matter was filed by Division of Enforcement Attorney Sandra L. Nowack on December 4, 2008 along with a Notice of Hearing. Copies of both documents were sent on the same day to Ms. Presterl by regular U.S. mail and also by certified U.S. mail at her last known address on file with the Department of Regulation and Licensing: 809 Oriole Drive, Streamwood, IL 60107. The Notice of Hearing informed Ms. Presterl that she was required to file an Answer to the Complaint within 20 days, and that if she failed to do so, she could be found to be in default, "and a default judgment may be entered against you on the basis of the Complaint and other evidence and the Wisconsin Board of Nursing may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing".

B. On December 8, 2008, a Notice of Prehearing Conference was sent by the Administrative Law Judge to Attorney Nowack a copy was sent by regular U.S. mail to Ms. Presterl at the address above.

C. The Complaint and Notice of Hearing that were sent to Ms. Presterl by regular U.S. mail were returned to the Department of U.S. Postal Service on January 5, 2009 with the following notation:
"RETURN TO SENDER
ATTEMPTED-NOT KNOWN
UNABLE TO FORWARD
RETURN TO SENDER".

D. The Complaint and Notice of Hearing that were sent to Ms. Presterl by certified U.S. mail were returned to the Department of U.S. Postal Service on January 7, 2009 with the following notation: "UNCLAIMED".

E. The Notice of Prehearing Conference that was sent to Ms. Presterl by regular U.S. mail was returned to the Department of U.S. Postal Service on January 13, 2009 with the following notation:
"RETURN TO SENDER
ATTEMPTED-NOT KNOWN
UNABLE TO FORWARD".

F. On January 21, 2009, Ms. Nowack filed a Motion for Default with supporting Affidavit.

FINDINGS OF FACT

1. The Respondent, Serilda D. Presterl, is licensed by the Wisconsin Board of Nursing as a Registered Nurse in the State of Wisconsin. Ms. Presterl holds license number 151162.

2. Ms. Presterl's last-known address on file with the Department of Regulation and Licensing is 809 Oriole Drive, Streamwood, IL 60107.

3. Ms. Presterl, was served, under the requirements of sec. RL 2.08 (1), Wis. Admin. Code, with a Complaint and Notice of Hearing on December 4, 2008.
4. Ms. Presterl did not file an Answer to the Complaint within 20 days of service as required by sec. 2.09, Wis. Admin. Code, as explained in the Notice of Hearing.
5. Ms. Presterl failed to inform the Department of Regulation and Licensing of a change of address within 30 days of the change.
6. At the time of the events in Findings of Fact 7 through 11, Mr. Presterl was employed as a registered nurse by BrightStar Healthcare, a healthcare staffing agency in Racine, Wisconsin.
7. On February 20, 2008, at approximately 10:30 A.M., Ms. Presterl came to the BrightStar office following a phone call in which she was asked if she would be interested in taking an IV therapy case. The IV therapy had been ordered by a physician and was necessary to maintain the client's health and well-being. Ms. Presterl assured BrightStar that she was competent in administering IV therapy and enjoyed that task. BrightStar staff gave Ms. Presterl documentation regarding the client and informed her of the details of the visit, including that the visit would take 3 ½ to 4 hours. Ms. Presterl accepted the assignment. Ms. Presterl said that she would be going "right over" to the client's home upon leaving the office.
8. On February 20, 2008 at approximately 1:30 P.M., Ms. Presterl went to the client's home and attempted to start the IV "a couple of times" but was unsuccessful. Ms. Presterl then told the client she would be leaving, but would return at 9:00 or 9:30 on February 21, 2008.
9. At approximately 10:30 A.M. on February 21, 2008, a registered nurse from another agency had contact with the client and called BrightStar to ask when Ms. Presterl would be returning to administer the IV. Ms. Presterl had not been in contact with the client since the initial visit.
10. BrightStar had heard nothing from Ms. Presterl since she left their office the morning of February 20, 2008. BrightStar made repeated attempts to contact Ms. Presterl, leaving messages on her voicemail and home answering machine. Ms. Presterl did not respond to BrightStar's messages, and ultimately another BrightStar nurse provided the IV infusion on February 21, 2008.
11. Even though Ms. Presterl did not respond to any of BrightStar's attempts to contact her concerning the client, she faxed a timesheet to them on February 25, 2008, reporting that she had worked 5 hours on February 20, 2008.
12. Ms. Presterl has not informed the Department of Regulation and Licensing of a change of address.

CONCLUSIONS OF LAW

- I. The Wisconsin Board of Nursing is the legal authority responsible for issuing and controlling nursing licenses in Wisconsin, under ch. 441, Stats., and it has jurisdiction over this hearing regarding a disciplinary complaint against a license-holder, under sec. 441.04 Stats., and ch. N 7, Wis. Admin. Code.
- II. The Wisconsin Board of Nursing has personal jurisdiction over the respondent, Serilda D. Presterl, based on her holding a license issued by the board, and based on notice under sec. 801.04 (2), Stats., and sec. RL 2.08, Wis. Admin. Code.
- III. Service of the Complaint and Notice of Hearing on Serilda D. Presterl was sufficient under sec. 440.11 (2), Stats., and sec. RL 2.08, Wis. Admin. Code.
- IV. By failing to file an Answer to the Complaint in this matter within 20 days of service, Serilda D. Presterl is in default as defined by sec. RL 2.14, Wis. Admin. Code.
- V. By her actions and inactions in Facts 6 through 10 above, Serilda D. Presterl committed negligence as defined in sec. N 7.03 (1) (b) and (d), Wis. Admin. Code, and is subject to discipline pursuant to sec. 441.07 (1) (b), (c) and (d), Stats.
- VI. By failing to inform the Department of a change of address within 30 days of the change, Serilda D. Presterl violated sec. 440.11 (1), Stats., and is subject to a forfeiture of \$50.

ORDER

THEREFORE, IT IS ORDERED that the license as a Registered Nurse issued to Serilda D. Presterl, is hereby **SUSPENDED**. Ms. Presterl may petition the Board of Nursing at any time to stay, modify or terminate the suspension upon proof satisfactory to the Board that she can practice nursing with a due regard for patient and public safety, and for

compliance with all rules regulating the nursing profession.

IT IS FURTHER ORDERED that Serilda D. Presterl pay the full costs of the Department's investigation and prosecution of this matter, and that her license remain suspended until she pays such costs. Payment shall be made by certified check or money order and sent to

Department Monitor
Department of Regulation and Licensing,
PO Box 8935, Madison, WI 53708-8935.
Fax (608) 266-2264
Tel. (608) 267-3817.

IT IS FURTHER ORDERED that Serilda D. Presterl pay a forfeiture of \$50 to the Department of Regulation and Licensing within 60 days of the date of this order, with payment made as described in the order above.

ANALYSIS

This is a class 2 proceeding under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Department's Division of Enforcement filed a Complaint alleging professional misconduct by Ms. Presterl. The Notice of Hearing stated that Ms. Presterl could be found to be in default if she did not respond to the complaint by filing an Answer.

All mailings sent to Ms. Presterl have been returned to the Department. Based on the U.S. Postal Service's notations, a reasonable and almost inescapable inference is that she does not currently reside at the address on file with the Department, and she has not notified the Department of a change of address in over 30 days. A finding of fact to that effect is made.

Even though Ms. Presterl did not receive the Complaint, the Administrative Rules contain provisions to permit the Board of Nursing and other credentialing authorities to act to protect the public even in the face of a respondent's non-response, or even disappearance. Service is considered legally adequate if mailed to the last-known address.

Ms. Presterl did not file an Answer to the Complaint, but again, the rules permit credentialing authorities to act to protect public even in the face of a respondent's non-response. When a person fails to file an answer or to appear at a hearing, the person may be found to be "in default" and the Board "may make findings and enter an order on the basis of the complaint and other evidence." This is similar to the standard in civil court cases in which allegations in a complaint that are not denied are deemed admitted, sec. 802.02 (4), Stats., and "if no issue of law or fact has been joined" a default judgment may be entered, sec. 806.01 (1), Stats. Section 806.02, Stats., requires a respondent to be served with any motion for judgment in a default situation, and that was done by Ms. Nowack with her January 21st motion.

The default rule contains a safeguard that is especially important in a case like this where the respondent has presented neither side of the case nor any facts or circumstances to be considered in her defense. The rule says, "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." There is no definition of what constitutes "reasonable time", but it is my recommendation that if Ms. Presterl contacts the Department or the Board at any time with an explanation for her non-responsiveness, the Board should review and consider her communication. The Board will then have the option of re-opening this matter and allowing Ms. Presterl to defend herself against the Complaint. And after considering all the evidence presented, the Board would have the option of revising its order.

Based on all the procedural steps explained above, the allegations in the Complaint are deemed proven, and a Conclusion of Law is made that by her actions and inactions in Findings of Fact 6 through 10, Ms. Presterl violated rules of the Nursing profession. There is no need here to discuss the nature of the violations or to explain that they merit discipline. The Board is well equipped to understand and interpret those.

Ms. Presterl's silence in a matter involving serious allegations of negligence endangering patient safety, and the absence of any reasonable explanation for her actions and inactions, makes license suspension the most appropriate discipline. As recommended by Ms. Nowack, the order contains a second safeguard against unfairly penalizing Ms. Presterl for her lack of communication with the Department and the Board. The terms of the proposed suspension contain a provision that would allow Ms. Presterl to request the Board to terminate the suspension if she satisfies the Board that she can practice nursing safely.

Under sec. 440.22, Stats., when discipline is imposed on a credential-holder, the Department has the authority to impose all or part of the costs of a proceeding on the credential-holder. The Board is directed to exercise discretion in its imposition of costs by considering certain factors, including the number of counts charged, contested, and proven; the nature of the misconduct; the level of discipline; the respondent's cooperation with the disciplinary process; prior discipline; and other relevant circumstances. In this case, the misconduct is serious, the level of discipline is relatively high, and the respondent did not cooperate with the disciplinary process (albeit through a total absence of communication). The record contains no ameliorating circumstances. Given this balance of positive and negative factors, the proposed order includes a provision that Ms. Presterl pay the Department's full costs of investigating and prosecuting this matter.

The Order imposes a forfeiture of \$50, which is the statutory penalty for failing to notify the Department of a change of address within 30 days of the change.

Dated and signed: February 13, 2009

Nick Schweitzer
Administrative Law Judge
Department of Regulation and Licensing