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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
NANCY RAE HEILGENDORF, L.P.N., RESPONDENT.	:	LS9111181NUR

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

Dated this 1 day of May, 1992.

Jacqueline Johnson RN MS

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST NANCY RAE HEILGENDORF, L.P.N. RESPONDENT.	: : : : :	PROPOSED DECISION LS9111181NUR

The parties to this proceeding for the purposes of Wis. Stats., sec. 227.53 are:

Nancy Rae Heilgendorf
N114 W15393 Gettysburg Drive
Germantown, Wisconsin 53022

Board of Nursing
P.O. Box 8935
Madison, Wisconsin 53708

Dept. of Regulation & Licensing
P.O. Box 8935
Madison, Wisconsin 53708

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on November 18, 1991. A hearing was held in the above-captioned matter on February 20, 1992. Steven M. Gloe, Attorney at Law appeared on behalf of the Dept. of Regulation and Licensing, Division of Enforcement. Nancy Rae Heilgendorf did not appear at the hearing.

Based upon the record herein, the 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. Respondent, Nancy Rae Heilgendorf, (D.O.B. 02/23/42), N114 W15393 Gettysburg Drive, Germantown, Wisconsin 53022, is duly licensed as a practical nurse in the State of Wisconsin. Respondent's license, #16660, was first granted on December 10, 1975.

2. On July 17, 1987, the Board of Nursing issued a Final Decision and Order limiting respondent's license to practice nursing for diverting Ritalin hydrochloride (methylphenidate), a controlled substance, from a facility where respondent was assigned for nursing duties.

3. The Board's July 17, 1987, order required respondent to undergo an assessment for chemical dependency within 30 days of the date of the order. The order provided that if the assessment results indicated that respondent needed treatment, respondent would be required to comply with numerous terms and conditions, including but not limited to, participate in an outpatient treatment program approved by the Board, submit to weekly monitoring of her blood and urine for the presence of controlled substances, and comply with reporting and employment requirements. If the assessment indicated that respondent did not require treatment, respondent would be required to submit quarterly reports from her employer, and to inform the Board of any change in her employment status.

4. Respondent failed to undergo an assessment for chemical dependency within 30 days of the date of the July 17, 1987 Final Decision and Order issued by the Board of Nursing.

5. On February 6, 1989, the Board of Nursing issued a Final Decision and Order suspending respondent's license to practice as a licensed practical nurse for a period of 30 days for failure to comply with the Board's July 17, 1987 order.

6. The February 6, 1989 order issued by the Board of Nursing provided that upon expiration of the term of licensure suspension, respondent would be issued a limited license for a period of three months subject to numerous terms and conditions, including but not limited to, the requirement that she participate in an outpatient treatment program approved by the Board; participate in weekly monitoring of her blood or urine for the presence of controlled substances; comply with reporting requirements and employment restrictions; refrain from being employed in a position where she would have access to any controlled substance, and refrain from consuming unprescribed controlled substances.

7. Pursuant to the Final Decision and Order issued by the Board of Nursing on February 6, 1989, the Board issued a certificate of licensure to Heilgendorf on or about March 7, 1989, to be effective for the period from March 7, 1989 to June 7, 1989. The order required Heilgendorf to apply for consecutive three-month renewals of her limited license, which would be granted upon acceptable demonstration of compliance with the conditions and limitations set forth in the order.

8. On May 11, 1989, respondent applied for and subsequently received a three-month renewal of her limited license, effective from June 8, 1989 to September 8, 1989.

9. On August 20, 1989, respondent applied for a second three-month renewal of her limited license. On September 1, 1989, the Board denied respondent's application for license renewal based upon a report the Board received from respondent's therapist on August 7, 1989, which indicated that respondent had not complied with the terms of the Board's February 6, 1989 order.

10. At some point in time after the Board of Nursing issued the limited license to Heilgendorf on or about March 7, 1989, Heilgendorf altered the license by adding the following type-written entries on the face of the certificate: "Dec 7, 1989 to June 7, 1990 to Dec 7, 1990 to June 7, 1991". The certificate of licensure was altered without the authorization of the Board of Nursing.

11. At some point in time after the Board of Nursing issued the limited license to Heilgendorf on or about March 7, 1989, Heilgendorf presented the altered license to her employer, Marian Franciscan Home, to support her claim of current licensure.

12. Heilgendorf worked as a practical nurse at Marian Franciscan Home at least from September 29, 1987 to August 27, 1991.

13. On or about July 30, 1991, Heilgendorf consumed hydrocodone, a controlled substance, in violation of the February 6, 1989, order issued by the Board of Nursing which required Heilgendorf to remain free of alcohol and unprescribed controlled substances. Respondent diverted hydrocodone for her personal use from her employer, Marian Franciscan Home.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to sec. 441.07 (1) and 441.10 (3) Wis. Stats.

2. Respondent, Nancy Rae Heilgendorf, by consuming hydrocodone, a controlled substance, on or about July 30, 1991, failed to comply with a condition contained in the Final Decision and Order issued by the Board of Nursing on February 6, 1989, in violation of Wis. Stats., s. 441.07 (1)(b), (c) and (d), and Wis. Adm. Code s. N 7.04 (1), (2), (14) and (15).

3. Respondent, Nancy Rae Heilgendorf, by altering the certificate of licensure issued by the Board of Nursing on or about March 7, 1989, without authorization from the Board, and by presenting the altered certificate to her employer as evidence of her licensure status violated ss. 441.07 (1)(b) and (d) and 441.10 (3)(c) Wis. Stats., and Wis. Adm. Code s. N 7.04 (1), (13) and (15).

4. Respondent, by failing to appear at the hearing held in the above-captioned matter on February 20, 1992 is in default, pursuant to s. RL 2.14 Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license, #16660, granted to Nancy Rae Heilgendorf to practice as a licensed practical nurse in the State of Wisconsin, be and hereby is REVOKED.

IT IS FURTHER ORDERED that pursuant to s. 440.22 Wis. Stats., the cost of this proceeding shall be assessed against respondent, and shall be payable by respondent to the Department of Regulation and Licensing.

This order is effective on the date on which it is signed by the Board of Nursing or its designee.

OPINION

A hearing was held in the above-captioned matter on February 20, 1992. Attorney Steven Gloe appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The respondent, Nancy Rae Heilgendorf did not appear at the hearing. Complainant moved for an order granting default pursuant to s. RL 2.14 Wis. Adm. Code.

The proposed findings of fact are based upon the information contained in the Complaint and testimony offered by the Complainant at the hearing. Finding of fact #1 is based primarily upon information contained in the Board's Final Decision and Order dated July 7, 1989, and Exhibit #1 which indicates that Heilgendorf was born on 2/23/42 (not 9/29/58, as alleged in paragraph #1 of the Complaint); that she was issued license #16660 (not #91320 as alleged in the Complaint), and that her certificate of licensure was issued on December 10, 1975 (not August 31, 1985 as alleged in the Complaint).

The evidence presented at the hearing establishes that the respondent violated s. 441.07 (1)(b) Wis. Stats., and Wis. Adm. Code ss. N 7.04 (1),(2), (14) and (15), by failing to comply with a condition set forth in the Board's Final Decision and Order dated February 6, 1989. In addition, the evidence establishes that respondent violated ss. 441.07 (1)(b) and 441.10 (3)(c) Wis. Stats., and Wis. Adm. Code s. N 7.04 (1), (13) and (15), by altering the certificate of licensure issued by the Board on or about March 7, 1989, and by presenting the altered certificate to her employer as evidence of her licensure status.

Having found that the respondent violated applicable provisions of ch. 441 Stats., and ch. N 7 Wis. Adm. Code, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Board of Nursing is authorized under ss. 441.07 (1) and 441.10 (3) Stats., to revoke, limit, suspend or deny renewal of a license of a licensed practical nurse, or to reprimand a licensed practical nurse if the Board finds that the person has engaged in conduct prohibited under s. 441.07 Stats.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct, and to promote the rehabilitation of the licensee. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

The Administrative Law Judge recommends that Heilgendorf's license to practice as a licensed practical nurse be revoked.

There are two areas of concern relating to Heilgendorf's fitness and competency to practice as a licensed practical nurse. The first concern relates to her diversion and consumption of controlled substances. The second area of concern relates to Heilgendorf's alteration of her certificate of licensure and subsequent presentation of the certificate to her employer as evidence of her licensure status.

(A) Chemical Dependency

In reference to Heilgendorf's diversion and consumption of controlled substances, the evidence indicates that this concern first surfaced in 1987, when disciplinary action was commenced against Heilgendorf for diversion of Ritalin hydrochloride from a health care facility where she was assigned for nursing duties. Heilgendorf denied at that time that she was chemically dependent.

Based upon the evidence presented at a hearing held in March, 1987, the Board issued a Final Decision and Order on July 17, 1987, which placed numerous limitations and conditions on Heilgendorf's license. One of the conditions contained in the Board's order was the requirement that Heilgendorf undergo an assessment for chemical dependency at an AODA-certified facility approved by the Board. The order also provided that if the assessment indicated that Heilgendorf needed treatment, she would be required to participate in an outpatient treatment program, refrain from being employed in a position where she would have access to any controlled substances, and refrain from consuming any unprescribed controlled substances.

For reasons unknown, Heilgendorf initially elected not to undergo an assessment for chemical dependency as ordered by the Board. After a second disciplinary proceeding was commenced against Heilgendorf in 1988 for failure to undergo an assessment for chemical dependency as ordered by the Board, Heilgendorf underwent an assessment at the McBride Center for the Impaired Professional at the Milwaukee Psychiatric Hospital. There is no evidence in the record regarding the results of Heilgendorf's assessment or treatment at the McBride Center.

On February 6, 1989, following a hearing in the second disciplinary proceeding commenced against Heilgendorf in 1988, the Board suspended Heilgendorf's license for a period of 30 days and further imposed numerous limitations and conditions upon her license. The Board again required Heilgendorf to participate in an outpatient treatment program, to refrain from being employed in a position where she would have access to any controlled substances, and to refrain from consuming any unprescribed controlled substances.

At least from September, 1989 until August, 1991, Heilgendorf worked as a practical nurse at Marian Franciscan Home in Milwaukee. On or about July 30, 1991, Heilgendorf consumed hydrocodone, a controlled substance, in violation of the Board's order requiring her to be free from unprescribed controlled substances. Based upon the evidence, Heilgendorf diverted hydrocodone for her personal use from her employer, Marian Franciscan Home.

As stated earlier, one of the purposes of discipline by occupational licensing boards is to promote the rehabilitation of the licensee. Another purpose of discipline is to protect the public. In this case, the Board has tried for at least two year (from July, 1987 to September, 1989), every available avenue to it to persuade Heilgendorf to seek treatment. Heilgendorf continued to consume unprescribed controlled substances, and elected not to seek treatment for her dependency. If Heilgendorf is unwilling to seek treatment for her dependency, the only viable option to the Board to assure protection of the public is to revoke her license.

Allowing Heilgendorf to continue practicing under a limited license is not a viable option. Heilgendorf has shown by her conduct in the past that persuading her to seek treatment will not be an be easy task. Absent clear evidence of her desire and commitment to seek treatment, any attempt to weigh the Board's interest in providing protection to the public and its interest in promoting Heilgendorf's rehabilitation becomes a delicate process. In light of the Board's past efforts to persuade Heilgendorf to seek treatment and her failure to do so, the focus at this point should be shifted to providing greater protection to the public.

(B) <u>Alteration of Certificate of Licensure</u>

The evidence establishes that Heilgendorf altered the limited license which the Board issued to her in March, 1989, by adding several dates on the face of the license to represent that the license was valid during those time periods, and subsequently presented the altered license to her employer for purposes of representing that she was a licensed practical nurse during the applicable time periods.

The Board issued a limited license to Heilgendorf on or about March 7, 1989, to be effective for the period from March 7, 1989 to June 7, 1989. The Board's February 6, 1989 order required Heilgendorf to apply for consecutive three-month renewals of her limited license which would be granted upon acceptable demonstration of compliance with the conditions and limitations set forth in the order.

On May 11, 1989, Heilgendorf applied for and received a three-month renewal of her limited license, which was effective from June 8, 1989 to September 8, 1989. On August 20, 1989 Heilgendorf filed a second request for a three-month renewal of her limited license. The Board denied Heilgendorf's second request for renewal of her license on September 1, 1989, based upon a report filed by Heilgendorf's therapist on August 7, 1989, which indicated that Heilgendorf had not complied with the Board's February 6, 1989 order. (Tran. p. 19).

At some point in time after the Board issued the limited license to Heilgendorf in March, 1989, Heilgendorf altered the license by adding the following type-written entries on the face of the license "Dec 7, 1989 to June 7, 1990 to Dec 7, 1990 to June 7, 1991". Heilgendorf presented the altered license to her employer, Marian Franciscan Home as evidence of her licensure status. Heilgendorf worked as a practical nurse at Marian Franciscan Home at least from September 29, 1987 to August 27, 1991. (Tran. p. 7-8).

Heilgendorf's conduct in altering her limited license by adding dates on the face of the license to misrepresent the actual effective date of her license, and in subsequently presenting the altered license to her employer as evidence of her licensure status is clearly the type of misconduct which the Board has an interest in protecting the public from as well as in deterring other licensees from engaging in. Although it is not clear from the evidence when Heilgendorf altered the license or when she actual presented it to her employer, it is clear why she altered it. In all likelihood Heilgendorf altered her license in response to the Board's vote on September 1, 1989 to deny her request for a three-month renewal of her limited license. However, regardless of why or when she altered the license, such conduct cannot be justified under any circumstances.

Based upon the evidence presented and the discussions herein, the Administrative Law Judge recommends that the Board of Nursing adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 26th day of March, 1992.

Respectfully submitted,

Ruby Jefferson-Moore

Ruby Jefferson-Moore
Administrative Law Judge

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)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decisi n. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Board ofNursing.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Board of Nursing

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Board of Nursing,

The date of mailing of this decision is May 5, 1992.