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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST MICHAEL J. NOUD, R.N., RESPONDENT.	: : : : :	FINAL DECISION AND ORDER LS9209291NUR

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 Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

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 8 day of January, 1993.

Jacqueline Johnson RN MS

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	Case No. LS-9209291-NUR
MICHAEL J. NOUD, R.N., RESPONDENT.	:	(DOE case number 91 NUR 072)

PARTIES

The parties in this matter under sec. 227.44, Wis. Stats. and sec. RL 2.036, Wis. Adm. Code, and for purposes of review under sec. 227.53, Wis. Stats. are:

Michael J. Noud
738-B Schoen Street
Green Bay, WI 54302

alternate address:
Michael J. Noud
5241 Edgewater Beach Road
Green Bay, WI 54311)

Board of Nursing
1400 East Washington Ave.
Madison, WI 53708

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

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint with the Board of Nursing on September 29, 1992. A disciplinary proceeding (hearing) was scheduled for November 11, 1992. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on September 29, 1992 to Michael J. Noud, who received it on October 2, 1992.

B. Mr. Noud responded to the complaint and notice of hearing by writing a letter which is reproduced here in full:

> 11 Oct. 92
> Green Bay, Wi
>
> To Whom It May Concern:
> I Have Received Notice of Hearing
> 92 NUR 072.
> I Will Appear to Rebut Any Allegations
> Against Me On 11/11/92, 0930, Room 133
> 1400 E. Washington Ave, Madison, Wi.
>
> (signature)
> Michael J. Noud
>
> Michael Noud
> 738-B Schoen St
> Green Bay 54302

C. The undersigned administrative law judge wrote back to Mr. Noud on October 19, 1992, informing him that he was required to file a formal answer to the complaint, and extending the time in which to file that to October 30, 1992.

D. No answer was filed by Mr. Noud.

E. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on November 11, 1992. Mr. Noud did not appear. The Board of Nursing was represented by Attorney Steven Gloe of the Department's Division of Enforcement. The hearing was recorded, and a transcript of the hearing was prepared and delivered on December 10, 1992. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

F. At the beginning of the hearing, Mr. Gloe moved that Mr. Noud be found in default, under RL 2.14, Wis. Admin. Code, for failing to file an answer and for failing to appear; this motion was granted. Mr. Gloe also moved that the record in this case be made confidential, to protect the identity of two patients who were referred to in the complaint and in testimony; this motion was granted as to the Board's file in this case, in which the two patients are fully identified. In the transcript and this proposed decision the patients are referred to by their first names only, so those documents are not restricted.

FINDINGS OF FACT

1. Respondent Michael J. Noud is and was at the time of the facts set forth below licensed as a practical nurse in the state of Wisconsin under license number 63234, originally granted on September 30, 1975.

2. At the time of the facts in this case, Mr. Noud worked as a registered nurse at the Outagamie Health Care Center, 3400 West Brewster Street, Appleton, Wisconsin.

3. On March 24, 1991 at approximately 3:00 P.M., Mr. Noud took one tablet of Ativan (lorazepam), a controlled substance, which was ordered for patient F.G. at 6:00 P.M., and diverted it to his own use.

4. On March 24, 1991 at approximately 3:00 P.M., Mr. Noud took one tablet of Ativan (lorazepam), a controlled substance, which was ordered for patient W.H. at that time, and diverted it to his own use.

5. On March 24, 1991, Mr. Noud attempted in various ways to cover up to nursing staff his diversion of Ativan, first stating to Sandra L. Miller that he had administered F.G.'s pill to her. When Ms. Miller informed him that F.G. denied receiving any medication, Mr. Noud then stated that he had thrown F.G.'s pill in the garbage. When Ms. Miller asked him to fill out a drug destruction sheet (exhibit #1), Mr. Noud made an incomplete entry for one tablet of lorazepam prescribed for W H. When Ms. Miller showed him that no pill was in the garbage bag into which he had thrown the paper cup originally containing the pill, Mr. Noud stated that he had thrown it in F.G.'s garbage. A later search of F.G.'s garbage by Suzanne Lemke produced no pill. At approximately 4:45 P.M. Mr. Noud produced a paper cup containing one tablet of Ativan, telling Ms. Miller that it had been in his pocket all the time.

6. Mr. Noud and Suzanne Lemke were the two supervising nurses in the building at the time, and they were the only two individuals on duty at the time who had keys to access the Health Center's contingency supply of medications. Shortly after 4:45 P.M. on March 24, 1991, Ms. Lemke checked the contingency supply and found missing one 0.5 mg tablet of Ativan, one 1 mg tablet of Ativan (exhibit #2), and two tablets of Tylenol #3.

7. Ms. Miller observed during the afternoon of March 24, 1991 that Mr. Noud had difficulty concentrating and fumbled when attempting simple tasks.

CONCLUSIONS OF LAW

I. The Board of Nursing has personal jurisdiction over the Respondent, based on his holding a credential issued by the board.

II. The Board of Nursing has jurisdiction over the subject-matter of this complaint, under sec. 15.08(5)(c), Wis. Stats, sec. 441.07, Wis. Stats, and secs. N 7.01, N 7.03, and N 7.04, Wis. Admin. Code, based on the filing of a complaint alleging unprofessional conduct.

III. The respondent, Michael J. Noud, is in default under sec. RL 2.14, Wis. Admin. Code, which means that the Board of Nursing may make findings of fact and enter a disciplinary order on the basis of the complaint and the evidence presented at the hearing.

IV. By his actions described in Findings of Fact 3 through 7, the respondent, Michael J. Noud, was negligent, contrary to sec. N 7.03, Wis. Admin. Code and sec. 441.07, Wis. Stats.

V. By his actions described in Findings of Fact 3 through 7, the respondent, Michael J. Noud, engaged in misconduct or unprofessional conduct, contrary to sec. N 7.04, Wis. Admin. Code and sec. 441 07, Wis. Stats.

ORDER

THEREFORE, IT IS ORDERED that the license to practice as a registered nurse previously issued to the respondent, Michael J. Noud, be revoked, effective ten days after this order is signed on behalf of the Board of Nursing.

IT IS FURTHER ORDERED that the respondent, Michael J. Noud, pay the costs of this proceeding, as authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code.

OPINION

The complaint and notice of hearing were mailed on September 29, 1992 to Mr. Noud, who received them on October 2, 1992. Mr. Noud wrote a letter indicating that he would appear at the scheduled hearing on November 11, 1992, but he did not. He also failed to file an answer to the complaint although he was informed of this requirement in the Notice of Hearing and in a letter from the undersigned administrative law judge. He is therefore in default, and the Board may proceed on the basis of the complaint and the evidence presented in the hearing.

The facts in this case were established by the testimony of Sandra Miller, a registered nurse at Outagamie County Health Center, and Suzanne Lemke, a registered nurse who in March 1991 was working as a supervisor at Outagamie County Health Center. The testimony was credible and convincing, and it was not rebutted by any evidence from Mr. Noud. The testimony proved by a preponderance of the evidence that Mr. Noud was negligent, contrary to sec. N 7.03(1)(d), Wis. Admin. Code in that, having taken the responsibility for giving medication to patient F.G., he failed to execute a medical order by administering it. Further, the testimony in the hearing proved by a preponderance of the evidence that Mr. Noud's actions constituted misconduct or unprofessional conduct, contrary to sec. N 7.04(2), Wis. Admin. Code in that he obtained a drug other than in the course of legitimate practice.

The discipline to be imposed upon a finding of misconduct or unprofessional conduct should be based on protection of the public, deterrence to other licensees, and rehabilitation for the offender. In this case, protection of the public is paramount, and in the absence of any information from Mr. Noud mitigating the offenses with which he has been charged, the appropriate discipline is revocation. Revocation will also serve to remind other nurses of the professional consequences of diverting controlled substances. I recommend revocation with no particular expectation that it will have a rehabilitative effect on Mr. Noud, but anything less than revocation would have the opposite effect, of failing to impress upon him the seriousness of his actions. His failure to respond to the complaint not only acts as an admission of the underlying facts, it indicates an uncaring attitude toward the credential granted to him, which further justifies its revocation.

If drug abuse underlay Mr. Noud's actions on March 24, 1991, he is encouraged to obtain whatever treatment may be necessary, and he should be aware that under sec. 441.07(2), Wis. Stats., a person whose license has been revoked may apply for reinstatement after one year.

The assessment of costs against a disciplined licensee is authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code. Mr. Noud's lack of cooperation and apparent disregard for these proceedings makes an order for costs appropriate.

Dated December 17, 1992.

John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

BDLS2-1965

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST MICHAEL J. NOUD, R.N., RESPONDENT.	: : : : :	AFFIDAVIT OF COSTS OF OFFICE OF BOARD LEGAL SERVICES Case No. LS-9209291-NUR

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

1. He is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.

2. In the course of his employment, he was assigned as the administrative law judge in the above-captioned matter.

3. Set out below are the actual costs of the proceeding for the Office of Board Legal Services in this matter:

   a. Administrative Law Judge Expense - John N. Schweitzer

Conduct hearing, November 11, 1992	1 1/4 hour
Reading, writing & research for Proposed Decision, November - December 1992	4 3/4 hours
	6 hours
Total administrative law judge expense: 6 hours @ $23.80/hour	= $142.80

   b. Reporter Expense - Magne-Script, 112 Lathrop Street, Madison, WI

Record hearing	$ 75.00
Transcribe hearings	$ 161.70
Total reporter expense	= $236.70

Total costs for Office of Board Legal Services = $ 379.50

John N. Schweitzer
Administrative ~~Law~~ Judge

Sworn to and signed before me this 18th day of December, 1992.

Lorrie [illegible], Notary Public, State of Wisconsin.

My commission 11-6-94.

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST MICHAEL J. NOUD, L.P.N., RESPONDENT.	: : : : :	AFFIDAVIT OF COSTS 91 NUR 072

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Steven M. Gloe, being duly sworn, deposes and states as follows:

1. That he is an attorney licensed in the state of Wisconsin and is employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement;

2. That in the course of those duties he worked as the prosecutor in the above-captioned matters; and

3. That set forth below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of business in the above-captioned matter:

INVESTIGATOR EXPENSE

Date	Activity	Time Spent
05/10/91	Review file	20 minutes
10/11/91	Draft memo	10 minutes
10/16/91	Draft correspondence; telephone calls	20 minutes
12/02/91	Draft correspondence	10 minutes
01/30/92	Draft correspondence	10 minutes
02/91/92	Review reports	30 minutes
02/19/92	Case conference; prepare case summary	45 minutes
		2 hours 25 min.

Total investigator expense for 2 hours 25 minutes at $18.00 per hour (based upon average salary and benefits for Division of Enforcement investigators) equals: $ 43.50

PROSECUTING ATTORNEY EXPENSE

Date	Activity	Time Spent
03/09/92	Review file; meet with investigator	1 hour
04/14/92	Review additional investigative materials	20 minutes
09/21/92	Draft complaint/other documents; schedule hearing	1 hour
10/20/92	Draft correspondence/witness subpoenas	30 minutes
11/04/92	Travel to Appleton; interview witnesses	6 hours
11/10/92	Hearing preparation	2 hours
11/11/92	Hearing preparation; attend hearing	2 hours 10 minutes
		13 hours

Total attorney expense for 13 hours at $30.00 per hour (based upon average salary and benefits for Division of Enforcement attorneys) equals: $ 390.00

WITNESS FEES

1. Sandra Miller	$ 5.00
2. Suzanne Lemke	$ 51.00
3. John Weyer	$ 47.00
Total witness fees (including mileage)	$ 103.00

MISCELLANEOUS DISBURSEMENTS

1. Mileage expense to Appleton	$ 44.20
Total Miscellaneous disbursements	$ 44.20

TOTAL DIVISION OF ENFORCEMENT ASSESSABLE COSTS $ 580.70

Steven M. Gloe

Steven M. Gloe

Subscribed and sworn to before me this 11th day of November, 1992.

_____, Notary Public My Commission is Permanent.

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 decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Board of Nursing.

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

2. Judicial Review.

Any person aggrieved by this decision has a right to petition f r 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 January 11, 1993.