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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

PETER W. WALTER,	FINAL DECISION AND ORDER
RESPONDENT.	LS9807171NUR

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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. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

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 14th day of May, 1999.

Timothy Burns, CRNA, Chair

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

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

PETER V. WALTER, R.N., A.P.N.P	PROPOSED DECISION
RESPONDENT.	Case No. LS-9807171-NUR

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

*Peter V. Walter
10 College Avenue
Appleton, WI 54911*

Peter V. Walter

*c/o Frank Russ
500 Park Place
Montego Bay, Jamaica*

*Board of Nursing
P.O. Box 8935
Madison, WI 53708-8935*

*Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708*

This matter was commenced by the filing of a Notice of Hearing and Complaint on July 17, 1998. An Amended Complaint was filed on July 28, 1998. Respondent's Answer was filed on July 27, 1998, by Atty. Thomas L. Frenn, Petrie & Stocking. A hearing was held in the above-captioned matter on September 23, 1998. Atty. Steven M. Gloe appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Respondent, Peter V. Walter did not appear at the hearing and was not represented by an attorney.

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. Peter V. Walter, RN, APNP (d.o.b. 5/24/44) is duly licensed in the state of Wisconsin to practice as a registered nurse (license #112126). Respondent's license was first granted on February 3, 1993.
2. Respondent was issued an Advanced Practice Nurse Prescriber certificate (#377) by the Wisconsin Board of Nursing on February 1, 1996.
3. Respondent's latest address on file with the Department of Regulation and Licensing is 10 College Avenue, Appleton, WI 54911.

Count I

4. From at least December 15, 1997, and continuing through at least June 1, 1998, respondent has practiced in Wisconsin as an Independent Advanced Practice Nurse Prescriber without malpractice insurance coverage despite notification from the Division of Enforcement of the insurance coverage requirements set forth in s. N 8.08, Code.

Count II

5. During 1997 and 1998, respondent provided treatment to Patient A. Patient A went to see respondent for assistance with weight loss.
6. On or about February 11, 1998, respondent prescribed thyroid supplementation medication to Patient A [30 tablets of Armour thyroid, 60 mg.] in addition to the existing regimen of medications prescribed by respondent for Patient A of Zoloft [one 100 mg. tablet daily] and Adipex (phentermine hydrochloride) [one 37.5 mg. tablet each morning]. Respondent prescribed thyroid supplementation to Patient A without any identified patient history of thyroid disease or medication and without any laboratory results showing a thyroid deficiency.
7. On February 11, 1998, respondent took a blood sample from Patient A for the purpose of running a thyroid test. Respondent's hands were shaking badly and he succeeded in drawing blood from Patient A only after multiple attempts. Respondent failed to timely submit the blood sample to the laboratory for testing, and Patient A returned to respondent approximately two weeks later so that a second blood sample could be drawn. Respondent failed to timely submit the second sample to the laboratory for testing, and Patient A returned to respondent approximately 2 weeks later so that a third blood sample could be drawn. Patient A never received any report of test results back from respondent relating to thyroid function.
8. On or about April 30, 1998, respondent prescribed Meridia to Patient A, in addition to an existing prescription regimen of Adipex and Zoloft.

Count III

9. On or about April 30, 1998, respondent informed Patient A that he could get fenfluramine for her from Jamaica. Fenfluramine is a Schedule IV controlled substance. It is no longer manufactured for distribution within the United States. Respondent received \$350 from Patient A for a 90 day supply of fenfluramine. Respondent informed Patient A that he would travel to Jamaica and obtain the fenfluramine for her.

10. On or about June 12, 1998, respondent dispensed a thirty day supply of fenfluramine [30 tablets] to Patient A. Respondent dispensed the medication to Patient A at the Road Star Inn in Appleton, Wisconsin.

11. Respondent promised to provide Patient A with the remaining fenfluramine [60 tablets]. Respondent failed to provide Patient A with the remaining tablets and failed to provide a refund for the medication which he did not provide.

12. The fenfluramine which respondent provided to Patient was obtained from outside the United States and was personally transported back to Wisconsin for delivery to Patient A.

Count IV

13. From at least January 1998 through April 18, 1998, respondent provided treatment to Patient B. Patient B went to see respondent for assistance with weight loss.

14. On or about January 16, 1998, respondent provided Patient B with a prescription for a one month supply of Zoloft and Adipex.

15. Respondent next saw Patient B on or about February 21, 1998.

16. On or about April 18, 1998, Patient B saw respondent for an appointment. Respondent did not recognize Patient B as a prior patient. During the appointment, respondent did not weigh Patient B, nor did he take her blood pressure or take any blood samples.

17. At the April 18, 1998, appointment, respondent provided Patient B with prescriptions for Meridia [one 15 mg. tablet daily], Adipex (phentermine hydrochloride) [one 37.5 mg. tablet each morning] and Dilantin [one 50 mg. tablet daily]. Respondent informed Patient B that the Dilantin would control "racing thoughts" experienced as a result of the other medications he prescribed. Patient B has no history of seizure disorder.

Count V

18. As a part of respondent's standard treatment program, respondent required patients to either attend group sessions or listen to assigned tape recordings. These tape recordings were sold to the patients.

19. One of the tapes provided to patients was entitled "Tenth Strategy". This tape was distributed to patients on exact dates unknown but at least in December 1997. The tape included the following information:

a. Respondent informed his patients that he was in possession of "approved medication that has been tested for 18 years" that would "reverse your aging process 20-30 years".

b. Respondent informed his patients that the medication referred to in par. (a) above would cost \$1,500.00 per shot and that he did not "mark up" the price of the medication.

c. Respondent informed his patients that the medication referred to in par. (a) above was approved by the Food and Drug Administration ("FDA") for the purpose of age reversal.

20. The medication referred to in paragraph 19 above was somatotropin (marketed under the brand names of Nutropin and Humatrope).

Default

21. Respondent did not appear at the hearing held in this matter.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to ss. 441.07 (1), and 441.16, Stats., and chs. N 7 and N 8, Wis. Adm. Code.
2. By having engaged in conduct as described in Findings of Fact 4, herein, respondent violated s. 441.07 (1) (b) and (d), Stats., and ss. N 7.04 (15) and N 8.08 (1) and (5), Code.
3. By having engaged in conduct as described in Findings of Fact 5-8, herein, respondent violated s. 441.07 (1) (b) (c) and (d), Stats., and ss. N 7.03 (1) and N 7.04 (15), Wis. Adm. Code.
4. By having engaged in conduct as described in Findings of Fact 9-12, herein, respondent violated s. 441.07 (1) (b) and (d), Stats., and ss. N 7.04 (1), (2), (5) (13) and (15) and N 8.09 (1), Wis. Adm. Code.
5. By having engaged in conduct as described in Findings of Fact 13-17, herein, respondent violated s. 441.07 (1) (b) (c) and (d), Stats., and ss. N 7.03 (1) and N 7.04 (2) and (15), Code.
6. By having engaged in conduct as described in Findings of Fact 18-20, herein, respondent violated s. 441.07 (1) (b) and (d), Stats., and ss. N 7.04 (1), (13) and (15), Wis. Adm. Code.
7. By failing to appear at the hearing held in this matter, respondent is in default under s. RL 2.14 Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Peter V. Walter to practice as a registered nurse be, and hereby is, REVOKED.

IT IS FURTHER ORDERED that:

1. Respondent's Advanced Practice Nurse Prescriber Certificate be, and hereby is, REVOKED.
2. Pursuant to s. 440.22, Wis. Stats., the cost of this proceeding shall be assessed against respondent, and shall be payable to the Department of Regulation and Licensing.

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

OPINION

This matter was commenced by the filing of a Notice of Hearing and Complaint on July 17, 1998. An Amended Complaint was filed on July 28, 1998. Respondent's Answer was filed on July 27, 1998, by Atty. Thomas L. Frenn, Petrie & Stocking. A hearing was held in the above-captioned matter on September 23, 1998. Atty. Steven M. Gloe appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Respondent, Peter V. Walter did not appear at the hearing and was not represented by an attorney. The last correspondence mailed by the Administrative Law Judge and the Division of Enforcement to Mr. Walter was sent to him at both of his mailing addresses, in Wisconsin and in Montego Bay, Jamaica. ¹

I. Alleged Violations. The Complainant alleges in its Complaint that by engaging in the conduct described therein, Respondent violated s. 441.07 (1) (b) (c) and (d), Stats., and ss. N 7.03 (1); N 7.04 (1) (2) (5) (13) and (15), and N 8.08 (1) (5) Wis. Adm. Code.

II. Applicable Law

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 chapter or any rule adopted by the board

under the authority of this chapter.

(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 (1) **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.

1. Atty. Frenn indicated in the Answer that he would no longer represent Mr. Walter after submission of the Answer.

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 ;

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

(5) Practicing beyond the scope of practice permitted by law;

(13) Obtaining or attempting to obtain any compensation by fraud, misrepresentation, deceit or undue influence in the course of nursing practices;

(15) Violating any rule of the board.

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.

III. Discussions

(A) Expert Testimony

Dr. Dianne L. Zwicke, M.D., testified at the request of the Division of Enforcement. Dr. Zwicke has practiced as a cardiologist for 12 years. Prior to entering medical school, Dr. Zwicke practiced as a registered nurse for 6 years. In conjunction with her practice as a cardiologist,

Dr. Zwicke has worked with patients in reference to weight loss. *Exhibit # 13.*

(B) Overview of Evidence

Count I

The evidence presented establishes that respondent violated s. 441.07 (1) (b) and (d), Stats., and ss. N 7.04 (15) and N 8.08 (1) and (5), Code.

At least from December 15, 1997, and continuing through at least June 1, 1998, Walter practiced in Wisconsin as an Independent Advanced Practice Nurse Prescriber without malpractice insurance coverage despite notification from the Division of Enforcement of the insurance coverage requirements set forth in s. N 8.08, Code. *Exhibits # 3, 5 and 12.*

Count II

The evidence presented establishes that respondent violated s. 441.07 (1) (b) (c) and (d), Stats., and ss. N 7.03 (1) and N 7.04 (15), Wis. Adm. Code.

During 1997 and 1998, Walter provided treatment to Patient A. Patient A went to see Walter for assistance with weight loss. On or about February 11, 1998, Walter prescribed thyroid supplementation medication to Patient A [30 tablets of Armour thyroid, 60 mg.] in addition to the existing regimen of medications prescribed by Walter for Patient A of Zoloft [one 100 mg. tablet daily] and Adipex (phentermine hydrochloride) [one 37.5 mg. tablet each morning]. Walter prescribed thyroid supplementation to Patient A without any identified patient history of thyroid disease or medication and without any laboratory results showing a thyroid deficiency.

On February 11, 1998, Walter took a blood sample from Patient A for the purpose of running a thyroid test. Walter's hands were shaking badly and he succeeded in drawing blood from Patient A only after multiple attempts. Walter failed to timely submit the blood sample to the laboratory for testing, and Patient A returned to Walter approximately two weeks later so that a second blood sample could be drawn. Walter failed to timely submit the second blood sample to the laboratory for testing, and Patient A returned to Walter approximately 2 weeks later so that a third blood sample could be drawn. Patient A never received any report of test results back from Walter relating to thyroid function.

On or about April 30, 1998, Walter prescribed Meridia to Patient A, in addition to an existing prescription regimen of Adipex and Zoloft.

Dr. Zwicke testified that the practice of prescribing thyroid medication as an adjunct to weight loss is inappropriate and has been felt to be inappropriate by the medical community for years. She said that the opinion held by the medical community and endocrinologists, specialists in gland deficiencies, is that the practice is completely inappropriate. She said that it was a practice 25 years ago but it has ceased and is now felt to be totally inappropriate. She also stated that the data in the record regarding the prescription history for Patient A is inappropriate. There is no documentation of chemical thyroid imbalance; therefore, there is no deficiency and no medical indication to prescribe thyroid supplements. *Tr. p. 15-16.*

Dr. Zwicke further testified that in her opinion, Walter's conduct in prescribing thyroid supplements for Patient A constitutes negligence. She said that it is medically contraindicated to provide thyroid supplements to a patient with a normal functioning thyroid and that thyroid supplements and Adipex are contradictory drugs. *Tr. p. 16-17.*

In reference to Walter's failure to follow up on the blood tests which he took for Patient A, Dr. Zwicke testified that a practitioner is required to establish a diagnosis. In order to establish a diagnosis of hypothyroidism or underactive thyroid, a practitioner must take blood samples and have the appropriate blood tests done. She said if the blood tests were not done, a diagnosis was not established; therefore, the treatment was inappropriate. Dr. Zwicke also stated that Walter's conduct in treating Patient A with thyroid supplements without establishing a diagnosis of hypothyroidism or underactive thyroid constitutes negligent practice. *Tr. p. 17-18.*

Finally, in reference to Walter's conduct in prescribing Meridia to Patient A in addition to an existing prescription regimen of Adipex and Zoloft, Dr. Zwicke testified that the use of Adipex or other related drugs similar to it, and Meridia is contraindicated by the FDA guidelines for the use of those drugs. She said that Zoloft can be used with either one of them, but Adipex and Meridia is an inappropriate combination of drugs. Dr. Zwicke stated that Walter's conduct in prescribing Adipex and Meridia for Patient A is below the minimum standards of the medical profession and constitutes negligence. *Tr. p. 18-19; 22-24.*

Count III

The evidence presented establishes that respondent violated s. 441.07 (1) (b) and (d), Stats., and ss. N 7.04 (1), (2), (5) (13) and (15) and N 8.09 (1), Wis. Adm. Code.

On or about April 30, 1998, Walter informed Patient A that he could get fenfluramine for her from Jamaica. Fenfluramine is a Schedule IV controlled substance. It is no longer manufactured for distribution within the United States. Walter received \$350 from Patient A for a 90 day supply of fenfluramine. Walter informed Patient A that he would travel to Jamaica and obtain the fenfluramine for her. *Exhibit #6*.

On or about June 12, 1998, Walter dispensed a thirty day supply of fenfluramine [30 tablets] to Patient A. Walter dispensed the medication to Patient A at the Road Star Inn in Appleton, Wisconsin. Walter promised to provide Patient A with the remaining fenfluramine [60 tablets], but failed to do so and failed to give her a refund for the difference. The fenfluramine which Walter provided to Patient A was obtained from outside the United States and was personally transported back to Wisconsin for delivery to Patient A.

According to Dr. Zwicke, fenfluramine is a drug that acts similar to the SSRI, which is the serotonin releasing drugs, it elevates mood slightly but suppresses appetite in that area of the brain. She said that it is yet to be determined if fenfluramine can be used with the antidepressant drugs, Zoloft, Prozac and Paxil. That is being investigated and is not an FDA approved use of the drug. If a patient is prescribed Phentermine, fenfluramine and Zoloft, it is not an approved use of those drugs. There are no clinical trials done on that yet. They are in progress, under research settings. *Tr. p. 24*.

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Count IV

The evidence presented establishes that respondent violated s. 441.07 (1) (b) (c) and (d), Stats., and ss. N 7.03 (1) and N 7.04 (2) and (15), Code.

From at least January 1998 through April 18, 1998, Walter provided treatment to Patient B. Patient B went to see Walter for assistance with weight loss. On or about January 16, 1998, Walter provided Patient B with a prescription for a one month supply of Zoloft and Adipex. Walter next saw Patient B on or about February 21, 1998. On or about April 18, 1998, Patient B saw Walter for an appointment. Walter did not recognize Patient B as a prior patient. During the appointment, Walter did not weigh Patient B, he did not take her blood pressure and he did not take any blood samples. Walter provided Patient B with prescriptions for Meridia [one 15 mg. tablet daily], Adipex (phentermine hydrochloride) [one 37.5 mg. tablet each morning] and Dilantin [one 50 mg. tablet daily]. He informed Patient B that the Dilantin would control "racing thoughts" experienced as a result of the other medications he prescribed. Patient B has no history of seizure disorder.

Dr. Zwicke testified, in reference to Walter's prescribing Zoloft and Adipex for Patient B, that such prescribing is not advocated but there is no harm documented from any prior research of using the two drugs in combination. There are some clinical trials being doing in a research setting registered with an investigation of the review board looking at medications like Zoloft with Adipex. The use of the drug combination in the general community outside of a research setting, right now is not accepted by the medical community as a standard of practice. She said the efficacy of the drug combination has not been established and is not accepted by the medical community, nor the FDA. She said that in her opinion, the patient should be informed that there is no efficacy established in the drug combination of medications, as a treatment; that it is currently considered investigational and that it is not an FDA approved use of the drugs. *Tr. p. 19-20*.

In reference to the allegation that when Walter saw Patient B for an appointment in April 18, 1998, he did not weigh her, take her blood pressure nor take any blood samples, and that he issued prescriptions to her for Meridia, Adipex and Dilantin, Dr. Zwicke testified that such conduct falls below the minimum levels of competency and constitutes negligence. She said that the prescriptions were inappropriate and that his management was also inappropriate. She said that Meridia and Adipex are not to be used together and that there would be no purpose in using Dilantin with this combination without the consultation of a neurologist in establishing a neurologic disorder for the use of Dilantin. *Tr. p. 20-21*.

Count V

The evidence presented establishes that . respondent violated s. 441.07 (1) (b) and (d), Stats., and ss. N 7.04 (1), (13) and (15), Wis. Adm. Code.

As a part of Walter's standard treatment program, Walter required patients to either attend group sessions or listen to assigned tape recordings. These tape recordings were sold to the patients. One of the tapes provided to patients was entitled "Tenth Strategy". This tape was distributed to patients on exact dates unknown but a least in December 1997. The tape included the following false and misleading information:

a. Walter informed his patients that he was in possession of "approved medication that has been tested for 18 years" that would "reverse your aging process 20-30 years".

b. Walter informed his patients that the medication referred to in par. (a) above would cost \$1,500.00 per shot and that he did not "mark up" the price of the medication.

c. Walter informed his patients that the medication referred to in par. (a) above was approved by the Food and Drug Administration ("FDA") for the purpose of age reversal.

The medication referred to above was somatotropin (marketed under the brand names of Nutropin and Humatrope. Refer to Exhibit # 4, p. 3, Admission 30 and Exhibits 9 and 10.

Dr. Zwicke testified that somatotropin is a growth hormone used by pediatric endocrinologists for children with growth disorders. She said to her knowledge somatotropin has not been approved by FDA as an age reversal medication. *Tr. p. 21-22.*

IV. Discipline

The evidence presented in this case establishes that the respondent violated numerous provisions of ch. 441, Stats., and chs. N 7 and N 8 Wis. Adm. Code. Having found that Walter violated laws governing the practice of registered and advanced practice nurses in Wisconsin, 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 s. 441.07 (1), Stats., to reprimand a registered nurse or limit, suspend or revoke the license of a registered nurse and may revoke, limit, suspend or deny renewal of a certificate to prescribe drugs or devices granted under s. 441.16, Stats., if it finds that the individual has violated any of the provisions set forth under that section.

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. McIntyre*, 41 Wis. 2d 481 (1969).

The Administrative Law Judge recommends that Walter's license to practice as a registered nurse and his Advance Practice Nurse Prescriber certificate be revoked. This measure is designed primarily to assure protection of the public and to deter other licensees from engaging in similar misconduct.

Public trust is essential to the practice of professional nursing. Mr. Walter has shown by his conduct that he cannot be trusted to competently issue prescription orders and that he is incapable of practicing as a registered nurse in a manner which safeguards the interests of the public. His actions reflect a total disregard for the well-being of the patients he treated. Revocation of Walter's credentials is the only viable measure available to the Board to assure that other patients will not receive the same type of treatment and that other licensees will not engage in similar misconduct.

Based upon the record 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 12th day of March, 1999.

Respectfully submitted,

Ruby Jefferson-Moore

Administrative Law Judge