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IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

FINAL DECISION

AND ORDER

LORALTY R. HARDEN, R.N.,
Respondent.

LS0210171NUR

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

Loralty R. Harden

315 Carpenter Street

Beloit, Wisconsin 53511

Board of Nursing

P.O. Box 8935

Madison, WI 53708-8935

Department of Regulation & Licensing

Division of Enforcement

P.O. Box 8935

Madison, Wisconsin 53708-8935

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on October 17, 2002. Ms. Harden did not file an Answer to the Complaint. A hearing was held on January 9, 2003. Atty. James W. Harris appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Ms. Harden did not appear at the hearing.

Administrative Law Judge Ruby Jefferson-Moore filed her *Proposed Decision* on March 19, 2003, and Michael J. Berndt filed the Division's *Objections to the Proposed Decision* on March 31, 2003.

The board considered the matter on May 9, 2003. The board thereafter accepted the Findings of Fact and Conclusions of Law proposed by the administrative law judge, but did not accept the suggested Order, instead

ordering that respondent's license be revoked. Accordingly, the Board of Nursing makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The respondent, Loralty R. Harden (d.o.b. 07/08/51) is duly licensed in the state of Wisconsin to practice as a registered nurse (license #030-87079). Respondent's license was first granted on March 28, 1984.

2. Respondent's most recent address on file with the Department of Regulation and Licensing is 315 Carpenter Street, Beloit, Wisconsin 53511.

3. On October 21, 1996, respondent was convicted in Rock-Beloit County, Branch 4, of battery, in violation of s. 940.19 (1), Stats. As a result of the conviction, respondent was placed on probation for 2 years and ordered to write apology letters to her victims.

4. On January 14, 2002, Ms. Harden was convicted in Rock County Circuit Court, Branch VI, of manufacture/delivery of cocaine, a felony, in violation of s. 961.41 (1) (cm) 1, Stats. [1999-2000]. Based upon allegations contained in the Criminal Complaint, on May 31, 2000, Ms. Harden sold cocaine to two undercover police informants who were wired with listening devices. She pled guilty to one count of manufacture/delivery of cocaine. As a result of the conviction, Ms. Harden was placed on probation for a period of 5 years. Among the conditions of probation, Ms. Harden may not use any drugs, unless prescribed by a physician, and may not consume alcohol. She was ordered to undergo assessment, treatment and counseling for alcohol and drug abuse; serve 120 days of jail time, and provide 100 hours of community service.

5. Ms. Harden did not file an Answer to the Complaint filed in this matter, and she did not appear at the hearing.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to s. 441.07 (1), Stats., and ch. N 7, Wis. Adm. Code.

2. By having been convicted of crimes substantially related to the practice of professional nursing, as described in Findings of Fact 3 and 4 herein, respondent violated s. 441.07 (1) (b) and (d), Stats., and s. N 7.04 (1), and (15), Code.

3. By engaging in misconduct, as described in Findings of Fact 4 herein, respondent violated s. 441.07 (1) (b) and (d), Stats., and s. N 7.04 (2), and (15), Code.

4. Respondent, by failing to file an Answer to the Complaint filed in this matter and failing to appear at the hearing, is in default under s. RL 2.14, Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Loralty R. Harden, RN, 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 to the Department of Regulation and Licensing.

EXPLANATION OF VARIANCE

The ALJ's Proposed Decision recommends that the board suspend Mr. Harden's license for an indefinite period, with provision for petitioning the board for consecutive three month stays of the suspension, conditioned on her compliance with a program of drug treatment and monitoring. The board does not consider the recommended discipline to be consistent with the established objectives of licensee discipline, which are protection of the public, promoting the rehabilitation of the licensee and deterring other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976).

First, the nature of the convictions underlying this action are not merely substantially related, but are directly related to the circumstances of the practice of nursing. Professional nurses work with vulnerable populations, and a propensity toward violence is antithetical to the practice of nursing. Similarly, nurses work in environments which provide ready access to controlled substances, and a propensity to engage in the illicit acquisition and sale of controlled substances is inconsistent with licensure as a professional nurse. Accordingly, the public health, safety and welfare imperatively require that such persons not be permitted to practice as professional nurses.

The ALJ's recommended order is obviously intended to permit the respondent to work toward her reformation and rehabilitation, and that is a worthy goal. The problem is that the respondent has failed to demonstrate in this record any willingness or motivation to rehabilitate herself, and did not even appear at the hearing to offer evidence in mitigation of the findings herein. She may of course petition the board at some future time to reinstate her license, but the burden must be on her at that time to demonstrate not only her willingness to pursue her rehabilitation, but also that she has made substantial progress in that regard.

Finally, the board is mindful that the important objective of deterring other licensees from engaging in similar behavior requires that the board deal with conduct as serious as respondent's in a manner that will communicate to the profession and to the public that the board will confront misconduct of this nature with the strongest possible response.

The board has accepted the ALJ's recommendation that the costs of this proceeding be assessed against Ms. Harder.

Dated this 16th day of May, 2003.

STATE OF WISCONSIN

BOARD OF NURSING

Linda M. Sanner, RN

Chair