

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
CYNTHIA A. THAYER,	:	LS0403181NUR
RESPONDENT.	:	

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 with the Department General Counsel 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 10th day of June, 2004.

Jacqueline Johnsrud
Chairperson
Board of Nursing

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	LS0403181NUR
CYNTHIA ARLENE THAYER, L.P.N.	:	
RESPONDENT	:	

PROPOSED DECISION AND ORDER

The parties to this action for purposes of §227.53, Wis. Stats., are:

Ms. Cynthia Arlene Thayer
5 Bel Aire Drive
Madison, WI 53713

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

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

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on April 22, 2004, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by attorney John R. Zwieg. Ms. Thayer did not appear.

Based on the entire record in this case, the undersigned 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. Cynthia Arlene Thayer, L.P.N., (dob 1/19/54) is duly licensed to practice nursing in Wisconsin (License No. 33707). Her license was first granted on July 29, 1996.
2. Ms. Thayer's most recent address on file with the Wisconsin Board of Nursing is 5 Bel Aire Drive, Madison, Wisconsin.
3. Ms. Thayer elected not to renew her license as a practical nurse when it expired on April 30, 2003. By paying the required fees, she may renew it pursuant to § 440.08 (3) (a), Wis. Stats.
4. In May 2001, Ms. Thayer was employed as a licensed practical nurse. At that time, her employer required that she be tested for possible drug use. The test results were positive for the presence of cocaine and marijuana. Ms. Thayer was terminated from her employment and has not worked as a nurse since that date.
5. On May 10, 2001, Ms. Thayer applied to the Department of Regulation and Licensing to participate in the Impaired Professionals Procedure (IPP), a non-disciplinary program available to credential holders with alcohol and/or drug impairment issues, which allows participants to obtain treatment and ongoing aftercare.
6. On July 20, 2001, Ms. Thayer enrolled in the IPP program and signed an "Agreement for Participation." Under the terms of the program, Ms. Thayer agreed to submit to random, monitored alcohol and drug screens at least four times per month.
7. Ms. Thayer's drug screens were all negative. At some point, Ms. Thayer had difficulty paying for the drug testing and in October 2002, requested that she not be required to have drug testing while she was not working as a nurse. Her request was denied. Thereafter, Ms. Thayer failed to follow the procedures for random testing. Ms. Thayer was notified of her noncompliance with the IPP program, but did not respond. On May 9, 2003, the Board of Nursing dismissed Ms. Thayer from the IPP program.

CONCLUSIONS OF LAW

1. The Nursing Board has jurisdiction in this matter pursuant to §441.07, Wis. Stats.
2. By having used cocaine and marijuana, Ms. Thayer engaged in unprofessional conduct contrary to sec. N 7.04 (2), Wis.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the Cynthia Arlene Thayer's right to renew her license as a practical nurse in the State of Wisconsin shall be **REVOKED**, beginning the date on which this Order is signed.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed upon Cynthia Arlene Thayer, pursuant to sec. 440.22, Wis. Stats.

OPINION

Section RL 2.14 of the Wisconsin Administrative Code provides that if a respondent fails to answer a complaint or fails to appear at a hearing, he or she is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent.

A Notice of Hearing and Complaint were sent to Ms. Thayer both by certified mail and by regular U.S. mail at her last known address on file with the Wisconsin Department of Regulation and Licensing. However, Ms. Thayer did not file an answer to the above-captioned complaint, nor did she appear at the scheduled hearing. As a result, Ms. Thayer is in default and has effectively admitted all of the allegations contained in the complaint. A summary of those allegations follows below.

In May 2001, Ms. Thayer was employed as a licensed practical nurse. At that time, her employer required that she be tested for possible drug use. The test results were positive for the presence of cocaine and marijuana. Ms. Thayer was subsequently terminated from her employment and has not worked as a nurse since that date.

On May 10, 2001, Ms. Thayer applied to the Department of Regulation and Licensing to participate in the Impaired Professionals Procedure (IPP), a non-disciplinary program available to credential holders with alcohol and/or drug impairment issues, which allows participants to obtain treatment and ongoing aftercare. On July 20, 2001, Ms. Thayer enrolled in the IPP program and signed an "Agreement for Participation." Under the terms of the program, Ms. Thayer agreed to submit to random, monitored alcohol and drug screens at least four times per month.

Although Ms. Thayer's drug screens were all negative, at some point, she had difficulty paying for the drug testing. In October 2002, she requested that she not be required to have drug testing while she was not working as a nurse. Her request was denied. Thereafter, Ms. Thayer failed to follow the procedures for random testing. She was notified of her noncompliance with the IPP program, but did not respond. On May 9, 2003, the Board of Nursing dismissed Ms. Thayer from the IPP program.

Because Ms. Thayer has effectively admitted all of the allegations contained in the complaint, the question remains as to what the appropriate form of discipline is for her. Revocation of her license has been recommended. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 485 (1969).

There is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on Ms. Thayer or that she even has an interest in being rehabilitated at this time. As to the deterrence of others, absent some mitigating evidence, imposing anything less than revocation would not aid in deterrence, but may instead wrongly encourage others to engage in similar conduct. Accordingly, revocation remains the only appropriate way in which to safeguard the public.

In addition, the imposition of costs against Ms. Thayer is recommended. Section 440.22(2), Stats., provides in relevant part as follows:

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. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against a respondent is a discretionary decision on the part of the Board of Nursing, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

Dated this 22nd day of April, 2004, at Madison, Wisconsin.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION & LICENSING
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Jacquelynn B. Rothstein
Administrative Law Judge