

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
LS0407121NUR**

**CYNTHIA LYNN KNOTEK, R.N.,
RESPONDENT.**

PARTIES

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

Cynthia L. Knotek	Cynthia L. Knotek	Cynthia L. Knotek
General Delivery	61 North Third Street	P.O. Box 573
De Soto, Wisconsin 54624	Lansing, Iowa 52151	Lansing, Iowa 52151

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

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on July 12, 2004. Ms. Knotek, the respondent, did not file an Answer to the Complaint. A hearing was held on August 17, 2004. Attorney James E. Polewski appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The respondent did not appear at the hearing.

Based upon the record herein, 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. The respondent, Cynthia L. Knotek (d.o.b. 10/07/59) is duly licensed in the state of Wisconsin to practice as a registered nurse (license #0134519). Respondent's license was first granted on March 3, 2003.

2. Respondent was employed by LaCrescent Health Care Center, LaCrescent, Minnesota on February 24, 2004, when she was asked to undergo a urine screen for drug use, as a result of the discovery that the facility was missing some hydromorphone.

3. Respondent tested positive for both morphine and hydromorphone.

4. Morphine and hydromorphone are designated as schedule II controlled substances under s. 961.16, Stats.

5. Respondent told her employer that she had obtained the morphine by purchasing it over the Internet without a prescription, and that she had no proof of that purchase.

6. Respondent was previously referred to the Department of Regulation and Licensing's Impaired Professional Procedure as a result of an alcohol and other drug abuse assessment following an arrest for operating a motor vehicle while under the influence of an intoxicant. The assessment found that she was an alcoholic, and that her prognosis for compliance with treatment recommendations and sobriety was poor.

7. Respondent did not respond to contacts from the Division of Enforcement by letter and e-mail involving her use of morphine without a prescription.

8. Respondent did not file an Answer to the Complaint and she 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 s. 441.07 (1), Stats., and ch. N 7, Wis. Adm. Code.
2. By engaging in misconduct, as described in Findings of Fact 2-5 herein, respondent violated s. N 7.04 (1) and (2), Code and s. 961.41 (3g), Stats.
3. 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 HEREBY ORDERED that the registered nurse license (#0134519) of Cynthia Lynn Knotek be, and hereby is, **REVOKED**.

IT IS FURTHER ORDERED that the full costs of these proceedings be assessed against the respondent. The Board agrees with the Administrative Law Judge's recommendation for assessment of full costs based on fairness to other members of the nursing profession. The Department of Regulation and Licensing is a "program revenue" agency and the costs of its operations are funded by the revenue received from its licensees. 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. Therefore, 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. This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist. In the Matter of Disciplinary Proceedings against M. Joanne Wolf, 165 Wis. 2d 1, 12, 476 N.W. 2d 878 (1991); In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III, 116 Wis. 2d 380, 385, 342 N.W. 2d 406 (1984). To the extent that misconduct by a licensee is found to have occurred following the expenses of a full evidentiary hearing, that licensee should bear the costs of the proceeding.

EXPLANATION OF VARIANCE

Based upon the entire record, and the reasons set forth herein, the Board of Nursing has varied the recommendations for discipline in the *Proposed Decision* prepared by the Administrative Law Judge (ALJ) Ruby Jefferson-Moore. The ALJ's disciplinary recommendation was weighted toward considerations of rehabilitation; in that the respondent's license would have been suspended, with an option for a stay of the suspension upon a showing of compliance with requirements for substance abuse treatment and monitoring. While this approach has been acceptable to the Board in prior cases, there is little, if any, indication that the respondent in this case is genuinely interested in her own rehabilitation. Given the respondent's poor track record with respect to her past rehabilitative efforts, the Board has determined that need for public protection requires a different disciplinary outcome.

The respondent had already been referred to, and accepted for participation in, the Impaired Professionals Program (IPP), which is voluntary rehabilitative program administered by the Department of Regulation and Licensing. By participating in the IPP, the respondent had the opportunity to retain her license, to continue to work in nursing and to avoid public disclosure of the sanctions on her license. Under the IPP, the respondent was required to adhere to the same conditions recommended by the ALJ; participation in a drug and alcohol dependency treatment, participation in Narcotics Anonymous or Alcoholic Anonymous, and random urine screening. Clearly, the respondent had a tremendous opportunity for advancing her own rehabilitation through the IPP. The fact that the respondent was even admitted to the program was remarkable given that her assessment indicated that her prognosis for compliance with treatment and sobriety was poor. The respondent chose not to

avail herself of the rehabilitative benefits of the IPP and was ultimately dismissed from that program for non-compliance.

The evidence before the Board suggests that the respondent has never taken personal responsibility for her misconduct. Initially, she did not self-report her substance abuse, but was caught by her employer when she tested positive for morphine and hydromorphone as result of a “reasonable suspicion” drug test. The evidence also shows that the respondent told her employer that she had been given morphine while in the hospital and that she could provide medical documentation of a valid prescription for controlled substances. Yet, when later confronted, the respondent admitted that she actually did not have a valid prescription. The respondent indicated that she had ordered the drugs over the Internet, but the website was not longer available. As a result, it remains unknown as to how the respondent acquired the controlled substances, including whether she may have diverted them from her place of employment or from a patient under her care.

The evidence in the record also strongly suggests that the respondent does not take the regulatory authority or disciplinary process seriously. When confronted with the prospect of formal disciplinary action against her license, the respondent failed to respond to the letters and notices from the Division of Enforcement; she failed to submit an Answer to the formal complaint; and she failed to appear at the hearing. In her written response to the *Objections to the Proposed Decision*, the respondent offered as her explanation for her failure to cooperate, that she had moved and had never received any correspondence from the Department. The respondent’s inability to receive correspondence was attributable to her failure to update her mailing address. The respondent’s inaction is not an acceptable defense to her failure to participate in the disciplinary proceedings. It is does not reflect well upon the value that the respondent places upon her license. In fact, the return address appearing on the respondent’s reply to the *Objections to the Proposed Decision*, dated November 3, 2004, is different than those appearing on the *Proposed Decision* itself, and is different from the respondent’s current address in the Department’s licensing records.

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). Although rehabilitation is a worthy goal, it is not paramount over the Board’s obligation to protect the public. Moreover, if the Board were to adopt the recommendations of the ALJ for discipline, such action would be tantamount to rewarding the respondent for her non-cooperation with the regulatory authority. She would essentially obtain the same benefits as a licensee who had self-reported or who had cooperated with the regulatory authority. This would send the wrong message to others in the nursing profession and destroy any incentive for licensees to cooperate with the Board and to take personal responsibility for their misconduct.

Finally, the evidence before the Board suggests that the respondent was, and is not, capable of conforming her conduct to the required standards of safe nursing practice. Since the respondent has rejected all previous opportunities for rehabilitation, the Board cannot presume that the continued or future licensing of the respondent would be compatible with the protection of the public safety, health and welfare. This decision does not, however, completely foreclose the possibility that the respondent could reapply for a nursing license in the future, when she can reliably demonstrate her rehabilitation.

STATE OF WISCONSIN BOARD OF NURSING

Jacqueline A. Johnsrud, RN
Chair

12-9-2004
Date