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STATE OF WISCONSIN
BEFORE THE PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
KAREN L. DOERING, P.T.,	:	LS0405102PHT
RESPONDENT.	:	

The State of Wisconsin, Physical Therapists Affiliated Credentialing Board, 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, Physical Therapists Affiliated Credentialing Board.

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 15th day of July, 2005.

Laurie Kontney
Member of the Board
Physical Therapists Affiliated Credentialing Board

STATE OF WISCONSIN
BEFORE THE
PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

KAREN L. DOERING, P.T.

Respondent

PROPOSED DECISION AND ORDER
#LS 0405102PHT

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

Karen L. Doering
516 S. 26th Street
Sheboygan, WI 53081

Division of Enforcement
Department of Regulation and Licensing
1400 E. Washington Avenue
P.O. Box 8935
Madison, WI 53708

Physical Therapists Affiliated Credentialing Board
1400 E. Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing in the above-captioned matter was conducted on September 28, 2004 before Administrative Law Judge (ALJ) Colleen M. Baird. The respondent appeared telephonically and by her attorney, John E. Raftery, 909 North 8th Street, Suite 120, Sheboygan, WI 53081. The Division of Enforcement appeared by Attorney James E. Polewski. Based upon the entire record in this case, the undersigned ALJ recommends that the Physical Therapists Affiliated Credentialing Board adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Karen L. Doering, (DOB: 04/1319/55), respondent herein, is licensed to practice physical therapy in the state of Wisconsin pursuant to license number #2137. This license was first granted on November 5, 1979.
2. On May 21, 2001, while employed as a physical therapist at St. Nicholas Hospital, Sheboygan, Wisconsin, respondent reported for work under the influence of an intoxicant.
3. Subsequent to this incident, respondent entered into an agreement on June 13, 2002, with the Department of Regulation and Licensing, Impaired Professionals Procedure (IPP).
4. Pursuant to the IPP agreement, respondent was to submit quarterly self reports on her compliance with IPP and her attendance at self-help groups.
5. Respondent failed to comply with the terms of the IPP agreement and the matter was referred to the Division of Enforcement for disciplinary action.
6. Respondent has been diagnosed with Major Depression, recurrent and severe, and alcohol dependence.

7. Respondent has been medically treated for depression since 1997. Since 2001, respondent has been under the care of a psychiatrist and has made remarkable progress in controlling her psychiatric condition.

8. Since 1999, respondent has been under the care of an alcohol and drug therapist for treatment of her alcohol dependence.

CONCLUSIONS OF LAW

1. The Physical Therapists Affiliated Credentialing Board has jurisdiction to act in this matter pursuant to Wis. Stats., s 440.03 (1) and Wis. Stats., s. 448.57.

2. Respondent's conduct in presenting for work as a physical therapist on June 13, 2001, while under the influence of an intoxicant is a violation of s. PT 7.02(9), Wis. Admin. Code.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that effective the date of this Order:

A. SUSPENSION

A. The license of Karen L. Doering, P.T., to practice as a physical therapist in the State of Wisconsin is SUSPENDED for a minimum period of FIVE (5) years and subject to petition for renewable stays of suspension if respondent is in compliance with the terms of this order. After five years of continuous satisfactory professional practice and compliance with this order, respondent may petition the Board for termination of all limitations and restoration of an unlimited license. If such a petition is denied, respondent may request a hearing. A hearing shall be held using the procedures set forth in ch. RL 21, Wis. Adm. Code. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of respondent's request, unless waived by respondent. Requesting a hearing does not remove any limitation during the pendency of the hearing process.

B. STAY OF SUSPENSION

B.1. Upon her initial application for a stay of suspension for a period of three months, respondent must provide proof acceptable to the Board of the following; (a) that she has maintained continuous sobriety for a period of at least three months; and (b) that she is successfully participating in a treatment program acceptable to the Board for her condition.

B.2. The suspension may thereafter be stayed for renewable periods of three (3) months upon submission of proof, acceptable to the Board or its designee, that respondent is in compliance with the provisions of Sections C and D of this Order.

B.3. The Board, or its designee, may without hearing remove the stay upon receipt of information that respondent is in substantive or repeated violation of any provision of Sections C or D of this Order.

B.4. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to respondent either by:

(a) Mailing to respondent's last-known address provided to the Department of Regulation and Licensing pursuant to § 440.11, Stats., or

(b) Actual notice to respondent or respondent's attorney.

B.5. The Board or its designee, in its discretion, may reinstate the stay if provided with sufficient information that respondent is in compliance with the Order and it is inappropriate for the suspension to remain in effect.

B.6. If respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in ch. RL 2, Wis. Adm. Code. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of respondent's request, unless waived by respondent. Requesting a hearing shall not stay the suspension during the pendency of the hearing process.

IT IS FURTHER ORDERED that the license of Karen L. Doering, P.T., to practice as a physical therapist in the state of Wisconsin is hereby LIMITED as follows:

C. REHABILITATION, MONITORING AND TREATMENT

Treatment Required

- C.1. Respondent shall continue participation in the drug and alcohol treatment program at The Center for Chemical Dependency Services, a treatment facility in Sheboygan, Wisconsin, under the supervision of Suzanne Grimm, M.D., (hereinafter referred to as "Treater"). Respondent may utilize a successor physician or treatment facility if the successor is acceptable to the Board or its designee. Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall provide Treater with a copy of this Final Decision and Order immediately.
- C.3. Treater shall be responsible for coordinating respondent's rehabilitation, drug monitoring and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as Treater, respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include psychiatric care and individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess respondent's progress in the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater. Attendance of respondent at such meetings shall be verified and reported monthly to Treater.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in § 961.01(4) Stats., except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's alcohol abuse history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee.
- C.10. Respondent shall refrain from the consumption of over-the-counter medications or other substances which may mask consumption of alcohol or controlled substances, or create false positive screening results, or interfere with her treatment and rehabilitation.
- C.11. Respondent shall report all medications and drugs, over-the-counter or prescription, taken by respondent to Treater within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. If respondent has not provided a release as required by C.9 above, within 24 hours of a request by Treater or the Board or its designee, respondent shall provide releases in compliance with state and federal laws. The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss respondent's treatment with, and provide copies of treatment records to, the requester.

Drug and Alcohol Screens

- C.12. Within thirty (30) days of this Order, respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Adm. Code § RL 7.11, (“Approved Program”). A list of Approved Programs is available from the Department Monitor.
- C.13. At the time of her enrollment in the Approved Program, respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a violation of this Order. The requirements shall include:
- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b.) Production of a urine specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.14. The Approved Program shall require the testing of urine specimens at a frequency of not less than **54** times per year, for the first year of this Order. After the first year, the frequency may be reduced only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.
- C.15. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, respondent shall promptly submit to additional tests or examinations as the Treater or the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.16. In addition to any requirement of the Approved Program, the Board or its designee may require respondent to:
- (a) submit additional urine specimens,
 - (b) submit blood, hair or breath specimens, and/or
 - (c) furnish any specimen in a directly witnessed manner.
- C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.
- C.18. The Approved Program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11. The Approved Program shall immediately report to Treater all specimens suspected to have been tampered with or which are positive or suspected positive for controlled substances or alcohol.

Practice Limitations

- C.19. Respondent shall practice only under the general supervision of a licensed physical therapist or other licensed health care professional approved by the Board or its designee and only in a work setting pre-approved by the Board or its designee.
- C.20. Respondent shall, in conjunction with recommendations from her Treater, initially limit her work schedule to the number of hours recommended as appropriate by her Treater for her continued recovery.
- C.21. Respondent shall provide a copy of this Final Decision and Order immediately to supervisory personnel at all settings where she works as a physical therapist or provides health care, currently or in the future.
- C.22. Respondent shall arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess respondents work performance.
- C.23. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

D. MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

**Department Monitor
Department of Regulation & Licensing,**

Division of Enforcement
1400 East Washington Avenue
P.O. Box 935, Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817
department.monitor@drl.state.wi.us

Required Reporting by Respondent

D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order by respondent and any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order.

Change of Treater or Approved Program by Board

D.3. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification

D.4. Respondent may petition the Board for modification of the terms of this Order. Any such petition shall be accompanied by a written recommendation from respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Stats., and Respondent shall not have a right to any further hearings or proceedings on the denial.

Costs of Compliance

D.5. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Additional Discipline

D.6. In addition to being a basis for removal of the stay of this suspension, violation of any term of this Order may be the basis for a separate disciplinary proceeding under § 448.57, Stats.

D.7. Violation of any the terms of this Order shall be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of respondent's license; the Board in its discretion may in the alternative deny a stay of suspension of the license or impose additional conditions and limitations, including additional screening, or other discipline.

This Order is effective on the date of its signing.

OPINION

The parties stipulated on the record to the Findings of Fact and Conclusions of Law and the respondent, acting through her legal counsel, indicated that she did not dispute any of the allegations of the complaint and that the conduct described therein constituted a violation of s. PT 7.02(9), Wis. Admin. Code. The parties then jointly stipulated that the only issue for hearing was the determination of the appropriate discipline.

The evidence received at the hearing on behalf of the respondent included testimony by the respondent, deposition testimony of the respondent's treating psychiatrist, Dr. Suzanne Grimm, and telephonic appearances by respondent's alcohol abuse therapist, June Becker, and respondent's primary treating physician, Dr. Pollack. The testimonial evidence detailed the respondent's history of treatment for depression and alcohol abuse.

Dr. Pollack testified that he has been respondent's primary treating physician since 1987. Dr. Pollack testified that he initially treated respondent for depression in 1997 and referred her to Dr. Robert Drucker, a psychiatrist, for further treatment. Dr. Pollack testified that respondent received Electro Convulsive Therapy (ECT) for her depression and that after the treatments he observed a tremendous improvement in her symptoms. Dr. Pollack was very supportive of respondent's ability to return to practice as a physical therapist, indicating that he thought it would aide in her overall recovery. Dr. Pollack indicated that he was familiar with respondent's practice as a physical therapist and in his opinion, she had excellent patient skills. Dr. Pollack indicated that he currently monitors respondent's use of anti-abuse for alcohol dependence.

The deposition testimony of Dr. Grimm indicated that she began treating respondent in May 2001, when respondent voluntarily admitted herself to Sheboygan Memorial Hospital. Respondent's nine-day admission for inpatient care was prompted by the incident at St. Nicholas Hospital. Respondent has continued with Dr. Grimm for psychiatric care on an outpatient basis. Dr. Grimm indicated that respondent has a diagnosis of major depression, recurrent and severe, and alcohol

dependence. Dr. Grimm indicated that she is currently treating respondent with anti-depressant medications. According to Dr. Grimm, the respondent's prognosis for long term recovery would be enhanced if she were able to return to work as a physical therapist. However, Dr. Grimm recommended that respondent demonstrate sobriety for at least three months before returning to work and that she work in a supervised setting where she is not the primary physical therapist. In addition, Dr. Grimm indicated that it would be beneficial to respondent to initially limit her work hours.

June Becker, a Chemical Dependency Counselor and Staff Therapist at Sheboygan Medical Center, testified that she has provided alcohol abuse therapy and counseling to respondent since May 2001. Becker indicated that she currently has weekly individual therapy sessions with respondent and has previously seen respondent for group sessions, as recommended by Dr. Grimm. Becker acknowledged that respondent had some relapses during the course of her treatment; for example, when her mother died. Becker explained that relapses are common during recovery and do not suggest a complete failure of treatment. According to Becker, the respondent has a good prognosis for recovery because she is compliant with her treatment. Becker concurred with Dr. Grimm's recommendation that respondent be allowed to return to work, with close monitoring, continued therapy, Alcohol Anonymous (AA) attendance, and random testing for alcohol abstinence.

The respondent testified on her own behalf regarding her struggle with depression and alcohol abuse. Respondent indicated that she started to have acute episodes of depression in the late 1990's and that she would self-medicate with alcohol. This conduct escalated in 2001 when respondent appeared at work under the influence of alcohol. Respondent testified that she realized that she needed professional help and voluntarily admitted herself to in-patient care. Respondent testified that she has received Electro Convulsive Therapy (ECT) for her depression, followed by an intensive regime of out-patient therapy for alcohol abuse, including AA meetings twice daily for five days per week. Respondent testified that she has continued to receive psychiatric care and alcohol dependence therapy and is voluntarily taking anti-abuse to ensure her total sobriety. Respondent testified that the anti-abuse is self-administered, but witnessed at her physician's office.

Respondent testified that the ECT treatments have greatly improved her mental status, that she does not feel hopeless and without goals. Respondent expressed remorse for her conduct and stated that she is making amends and wants to move on with her life. She testified that she has a better support system for handling problems than she did in 2001. Respondent testified that she truly enjoyed her work as a physical therapist and that she had a reputation for quality care, having attained the level of PT supervisor at St. Nicholas Hospital where she had been employed for twenty years.

Respondent testified that she has not worked since 2002 and that she really wants to return to work and is willing to abide whatever limitations the Board may impose upon her. Respondent did request permission to use a saliva swab testing device to verify her sobriety. The Respondent explained that the saliva swab is new product that is easily administered in a physician's office and is considerably less expensive than standard urine specimen testing. She requested that Board consider allowing her to use this new device as a part of her monitoring requirements.

In closing written arguments, the parties acting through their attorneys indicated that they were in substantial agreement with the terms of the impairment monitoring order, except for the process to be used for monitoring the respondent's sobriety. Specifically, the respondent's attorney requested that his client be allowed to switch to the saliva swab device three months after the order goes into effect. Respondent's attorney indicated that he is in the process of securing additional information regarding the efficacy of the saliva device that would be submitted to the Board in support of a modification petition. The Respondent's attorney submitted information which describes the saliva swab product, known as the Alco-Screen, as an inexpensive, non-invasive method similar to a dip-stick style test that uses saliva rather than urine as the test specimen. The manufacturer brochure states that the product is effective and reliable.

In written closing arguments by the Division of Enforcement, the prosecuting attorney contended that the saliva test device proposed by respondent has not been previously approved by any of the Boards attached to the Department and the accuracy, precision and reliability of the test is unknown. The Division further argued that the burden is on the respondent to prove that the test device is equivalent in accuracy, precision and reliability to the urine or blood samples currently recognized and approved by the Boards under the standard monitoring program. The position of the Division is that the ability to correctly determine with precision whether or not the respondent has consumed alcohol is an essential consideration to a valid monitoring program. The Division also maintained that the ability to precisely determine the amount of alcohol consumed is an important element as well as the ability to measure the same sample with repeated accuracy.

The arguments of the Division are compelling for a number of reasons. The current monitoring program administered by the Department on behalf of the Boards has been in place for many years and has a track record of success in numerous cases of professional discipline where substance abuse is involved. This monitoring program incorporates a number of therapeutic interventions, often tailored to the specific needs of the individual; however, one of the basic components of the

monitoring program is random urine screening. Depending upon the individual's condition and circumstances, the Board may adjust the frequency of the screens throughout the monitoring period, but the accuracy, precision and reliability of the testing process must be maintained.

Although new devices or technology may become available in the future which could replace the current urinalysis testing process, the information presented to this Administrative Law Judge falls short of the convincing proof necessary to establish that the proposed saliva test is as accurate, precise or reliable as the urinalysis testing process. The elements of precision, accuracy and reliability should not be compromised for the sake of mere cost-savings. In fact, it is the respondent herself who should demand that the system used for her sobriety testing is as precise, accurate and reliable as possible because the consequences of a testing error or false-positive could result in the suspension or revocation of her license; in other words, the stakes are high. In the event of positive test under the standard urine testing system, additional tests can be performed on the sample to rule out possible false-positives. It is unclear in the information provided by respondent's attorney that retesting option is available for the saliva swab. The respondent will strive hard to maintain her sobriety and she should have the benefit of a testing system that is as accurate, precise and reliable as possible.

It was admitted and stipulated to by the parties that the respondent's conduct constituted a violation of the standards of professional conduct. Based upon the stipulation to the conduct and violations of law, the imposition of professional discipline is, therefore, warranted. The purpose of discipline in this case will promote the respondent's rehabilitation, protect the public and deter others from such conduct. This outcome is consistent with the established purposes of licensee discipline in Wisconsin: 1) to protect the public; 2) to promote the rehabilitation of the licensee; and 3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1969). Monitoring requirements are often imposed to achieve the goals of licensee discipline. It is through appropriate monitoring that the rehabilitated professional will be able to continue his or her practice safely while ensuring that the public will be protected and others will be deterred.

For these reasons, it is recommended that the standard impairment order, which is followed by the Boards attached to the Department, be imposed upon respondent and that she fulfill those requirements as a condition to being re-licensed and allowed to return to work. These requirements shall include continued therapy and psychiatric treatment, and the standard periodic alcohol screening by urinalysis. Additionally, the respondent shall have practice restrictions, including a restriction that she be employed in a supervised work-setting and that she limit the number of hours worked per the recommendation of her Treater. The period of these limitations shall be for five years, with an option for petition to modify any of these requirements after the first year. In the event that the respondent is able to demonstrate to the satisfaction of the Board that an accurate, precise and reliable alternate device for alcohol screening is available, it will be in the Board's discretion to approve or disapprove its' use for future screening when a petition for modification is submitted.

In addition to the aforementioned discipline, the Board retains the discretion to impose all or part of the costs of this proceeding against the respondent. However, in view of the financial obligations undertaken voluntarily by respondent for her treatment while she was not working as physical therapist, the future cost of her compliance with the monitoring required under this order, including urine drug screens, and because the parties did not require a full evidentiary hearing, it is recommended by this Administrative Law Judge that the costs of this proceeding not be imposed upon respondent. For the same reasons, it is further recommended that respondent be allowed to satisfy the initial requirement that she demonstrate three months of sobriety, as a pre-condition to her ability to return to work, with physician-verified alcohol abstinence testing, which may include use of the saliva swab product. This is granted solely for this initial three month time period because the respondent has not been working, is not covered by employer health care insurance, and has been voluntarily treating with anti-abuse. However, when the respondent returns to work as a physical therapist, she will be required to enroll and participate in a drug and alcohol monitoring program which is approved by the Department and to submit to the standard random urinalysis testing at designated collection sites.

Dated this 29th day of October, 2004.

Respectfully Submitted

