

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
MELISSA K. LORMAN,	:	LS0503151NUR
RESPONDENT.	:	

Division of Enforcement Case No. 03NUR269

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 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 9th day of June, 2005.

Jacqueline Johnsrud, RN
Board Member
Board of Nursing

STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	AND
MELISSA K. LORMAN, R.N.,	:	ORDER
RESPONDENT.	:	CASE # LS 0503151-NUR
	:	
	:	

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Melissa K. Lorman, R.N.
W2428 Turner Road
Jefferson, WI 53549

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

Board of Nursing
Department of Regulation and Licensing
1400 East Washington Avenue
Madison, WI 53708-8935

PROCEDURAL HISTORY

On March 15, 2005, the Department of Regulation and Licensing, Division of Enforcement filed a complaint seeking discipline against Melissa K. Lorman, R. N. The Complaint and a Notice of Hearing was served on the respondent by mail. The respondent failed to file an answer or other responsive pleading.

A hearing in the above-captioned matter was held on April 25, 2005, as noticed in the Notice of Hearing, before Administrative Law Judge Dennis C. Schuh. The Division of Enforcement appeared by Attorney John R. Zwieg. The respondent failed to appear.

Based on the entire record herein, the administrative law judge recommends that the Board of Nursing adopt as its final decision in this proceeding, the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Melissa K. Lorman, R.N., Respondent, date of birth November 7, 1970, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 140638, which was first granted February 12, 2002.

2. Respondent's last address reported to the Department of Regulation and Licensing is W2428 Turner Road Jefferson, WI 53549

3. During August 2003, Respondent was employed as a registered nurse at Fort Health and Rehabilitation Center (Center) in Fort Atkinson, Wisconsin. On August 22, 2003, Center administration became concerned that tablets of Vicodin brand of hydrocodone/acetaminophen, a schedule III controlled substance, might be missing. The Center requested that Respondent submit to a drug test.

- a. On August 22, Respondent provided a urine specimen for drug testing.
- b. The lab did not test for hydrocodone, because they were not notified to do so.
- c. The lab did test for other drugs and Respondent's specimen was positive for morphine, a schedule II controlled substance.

4. On August 26, 2003, when asked by Center administrators, Respondent reported that she had prescriptions for hydrocodone, amitriptyline and ibuprofen, but no other medications. Then, Respondent was informed that her test result was

positive for morphine.

5. Later that day, Respondent called Center administrators and said she had an old prescription for oral morphine and may have taken one but no longer had the bottle. Respondent was advised to get a drug profile from her pharmacy and bring it to the Center.

6. Respondent was scheduled by the Center to meet with the Center's Executive Director and Director of Nursing on August 29, 2003 to discuss her August 22 positive morphine test result. Respondent did not attend the meeting, never met with anyone from the Center and never provided any evidence she had ever had a prescription for morphine. The Center terminated Respondent's employment.

7. Wis. Stat. § 961.41(3g) prohibits possession of a Schedule II controlled substance unless obtained directly or by prescription of a practitioner. Respondent never had any legitimate order or prescription from a practitioner for the morphine which was in her body on August 22, 2003. Her possession of the morphine was in violation of this law substantially related to the practice of nursing and was the obtaining of a drug other than as allowed by law.

8. On September 24, 2003, the following occurred:

- a. Respondent telephoned the Miller Pharmacy in Mukwonago, Wisconsin.
- b. Respondent pretended to be a physician's nurse authorizing a telephone prescription for 100 tablets of Vicodin brand of hydrocodone, a schedule III controlled substance, using another person's name as the name of the patient.
- c. Respondent went to the pharmacy and attempted to pick up the prescription by claiming to be the person she had named as the patient.
- d. The pharmacist became suspicious and had Respondent wait while the pharmacist secretly called the physician and confirmed the prescription was not legitimate and then called the police.
- e. The police confronted Respondent at the pharmacy. Respondent initially lied to the police. As the officer continued to confront her, Respondent finally admitted she had called in the fake prescription.

9. Wis. Stats. § 961.43(1) (a) and § 939.32 prohibit attempting to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge. Respondent's attempting to obtain Vicodin with a fraudulent telephone prescription was in violation of these laws, which are substantially related to the practice of nursing.

10. The Division of Enforcement has attempted to question Respondent about these allegations by sending letters to Respondent and leaving messages for Respondent on her telephone answering machine. Respondent never responded to any of these inquiries.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction to act in this matter, pursuant to Wis. Stat. §440.03(1) and 441.07(1) (d) and Wis. Admin. Code N §7.01, N 7.04(1), and N 7.04(2).

2. Respondent, by engaging in the conduct set out in Paragraphs 3 through 7 of the Findings of Fact, has administered and obtained drugs other than in the course of legitimate practice and as otherwise prohibited by law, which is misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(2), and which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1) (d).

3. Respondent, by engaging in the conduct set out in Paragraph 8 of the Findings of Fact, has committed misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(1), and which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of MELISSA K. LORMAN, R.N. to act as a registered nurse is **REVOKED**.

IT IS FURTHER ORDERED that MELISSA K. LORMAN, R.N. pay the assessable costs of this proceeding.

This Order is effective on the date of its signing.

OPINION

Applicable Law

Wisconsin Statutes §441.07 provides in part;

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:

...

(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.

Wis. Admin. Code Med 7.04 Misconduct or unprofessional conduct provides, in part:

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. A certified copy of a judgment of conviction is prima facie evidence of a violation;

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

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).

The state's purpose in licensing professionals is to protect its citizens.

Strigenz v. Department of Regulation and Licensing 103 Wis.2d at 286, 307 N.W.2d at 667.

License revocation is the ultimate means of protecting the public short of fining or imprisonment.

Strigenz v. Department of Regulation and Licensing, 103 Wis.2d 281, 287, 307 N.W.2d 664 (1981).

ANALYSIS

On March 15, 2005 the Department of Regulation and Licensing, Division of Enforcement filed a Complaint and Notice of Hearing alleging two violations of professional licensing and standards by the Respondent Melissa K. Lorman, R.N. An Affidavit of Mailing indicates that the documents were sent to the Respondent's last known address of W2428 Turner Road, Jefferson, Wisconsin and to P.O. Box 256 Palmyra, Wisconsin. A return receipt dated 3-16-05 bearing a signature appearing to be that of Melissa Lorman is part of the file.

More than twenty days have elapsed and there has been no answer or other responsive pleading filed by the respondent. The respondent failed to appear at the scheduled hearing and no one appeared on her behalf.

Section RL 2.14 of the Wisconsin Administrative Code provides that a respondent who fails to answer a complaint or fails to appear at a hearing 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.

The complainant requested that the administrative law judge deem the allegations in complaint admitted by the respondent based upon her failure to appear or answer. The complainant requested revocation of the respondent's license to act as a registered nurse and imposition of costs.

The burden of proof is set forth in Wis. Stats., 440.20 (3) as a preponderance of the evidence. The allegations of the complaint are uncontested and deemed admitted. The allegations support the Findings of unprofessional conduct.

The respondent's behavior established by this record constitutes a violation of two separate sections of the regulations governing professional conduct. The conduct as described in Count I of the department's complaint establishes the use of a schedule II controlled substance, morphine, without a prescription. The violation is based upon a urine screen obtained in the course of respondent's employment as a registered nurse. The fact that the respondent attempted to justify the presence of morphine in her urine by alleging the presence of past prescription is additionally troubling.

The second count established an attempt to obtain a schedule II controlled substance, Vicodin brand of hydrocodone, by fraud or misrepresentation. The complaint documents the use of false representation of identity. This is a violation of the rules of professional conduct.

Both of the instances violate the minimum standards of the profession and create a risk to the health, safety and welfare of the public. The first offense demonstrates that the respondent is likely to have an untreated substance abuse problem. She has used a controlled substance, morphine, without a prescription. Despite being presented with the opportunity, respondent failed to present any evidence to her employer that she has gained access to that substance through lawful channels, i.e. by prescription. Presumably, she obtained the substance without proper authority in addition to using the substance inappropriately. The second offense is equally as troubling for several reasons. The incident occurred in close temporal proximity to the first incident. It involved the use of a false representation of authority to prescribe and a false representation of identity to obtain. Clearly, this conduct is substantially related to the practice of nursing by the respondent and is exactly the type of conduct that the regulation is designed to prohibit.

The respondent has presented no evidence in mitigation of the circumstances. Absent any information on the rehabilitative attempts, a revocation of license is appropriate.

A license suspension or revocation is a penalty that should be reserved for those circumstances in which the issue of public protection requires the ultimate response. The circumstances here rise to that level. The safety of the public would not be adequately protected by calling the respondent's attention to her deficit and requiring that she improve her education and training or merely engage in counseling. License limitations would not adequately protect the public as demonstrated by the fact that the second offense involved use of knowledge of the medical protocols in an attempt to obtain controlled substances through fraud and misrepresentation. Such behavior clearly indicates that mere license limitations would not be effective to protect the public.

A revocation will also serve the third purpose of discipline, to deter other licensees from similar conduct. The medical profession requires and receives a special trust from the public. Our health, welfare, and safety are routinely entrusted to medical personnel. The respondent's conduct jeopardizes the patient's health welfare and safety when health care decisions are made by professionals under the influence of inappropriately used controlled substances. The conduct also violates the special trust placed in her by that society to assure that substances, which can both heal and hurt are used appropriately. A revocation of license sends a strong message to deter other licensees from similar conduct.

COSTS

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats., and sec. RL 2.18, Wis. Admin. Code, but neither the statute nor the rule clearly indicates the circumstances in which costs are to be imposed. The Board of Nursing has the discretion to impose all, some, or none of the costs of the proceeding.

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 the 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 ALJ's recommendation that the full costs of the proceeding be assessed is based on two factors. First, 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 an evidentiary or default hearing, that licensee should bear the costs of the proceeding.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".[\[ccc1\]](#)

Dated this 2nd day of May 2005.

Dennis C. Schuh
Administrative Law Judge

[\[ccc1\]](#) I assume this paragraph will not be present when the case is resolved via a Stipulation and the Respondent has waived all appeal rights.