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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
SANDRA L. WALLACE, L.P.N.,	:	LS0505253NUR
RESPONDENT.	:	

Division of Enforcement Case No. 04NUR155

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 26th day of January, 2006.

Marilyn Kaufmann Ph.D., RN
Member of the Board
Board of Nursing

**STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

**PROPOSED DECISION
Case No. LS0505253-NUR**

**SANDRA L. WALLACE, L.P.N.,
RESPONDENT.**

PARTIES

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

Sandra L. Wallace
103 Kettle Moraine Dr. S, Apt. 3
Slinger, WI 53086

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

This matter was commenced by the filing of a Notice of Hearing and Complaint on May 25, 2005. The hearing was held on August 4, 2005. Atty. Arthur Thexton appeared on behalf of the Division of Enforcement. The respondent, Sandra L. Wallace, did not file an Answer to the Complaint and did not appear at the hearing held in this matter.

Based upon the record herein, the 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. Sandra L. Wallace (dob:3/4/59) is licensed as a Licensed Practical Nurse in the State of Wisconsin (license #27863). This license was first granted on December 6, 1984.

2. Ms. Wallace's most recent address on file with the Department of Regulation and Licensing is 103 Kettle Moraine Drive, S., Apartment 3, Slinger, WI 53086.

3. At least from November, 2003 and June, 2004, Ms. Wallace was employed by Virginia Highland Health & Rehabilitation Center, in Germantown, WI, as a Licensed Practical Nurse. While employed at Virginia Highland, Ms. Wallace was assigned to care for home hospice patient AW. Between November 2003 and April 2004, while providing care to patient AW, on at least 11 occasions, Ms. Wallace diverted the controlled substance oxycodone by ordering it from a pharmacy for patient AW, then ingesting the oxycodone herself, without a prescription or other authority. The patient was charged for the medication.

4. Following an evaluation at Genesis Behavioral Services, Inc., Ms. Wallace was diagnosed with opioid dependence. Ms. Wallace participated in treatment for her condition at Genesis Behavioral Services, but was discharged on February 25, 2005, for repeated absence from her aftercare group.

5. Ms. Wallace did not file an Answer to the Complaint filed in this matter, and 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 Wis. Stats. § 441.07, and Wis. Adm. Code ch. N 7.

2. Respondent's conduct as described in Findings of Fact 3 herein, constitutes abuse of alcohol or other drugs within the meaning of Wis. Adm. Code § N 7.03 (2), and misconduct or unprofessional conduct in violation of Wis. Adm. Code § N 7.04 (1), (2) and (15).

3. By failing to file an Answer to the Complaint and failing to appear at the hearing held in this matter, respondent is in default under Wis. Adm. Code § RL 2.14.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Sandra L. Wallace to practice as a licensed practical nurse (license #27863) be, and hereby is, REVOKED.

IT IS FURTHER ORDERED that pursuant to Wis. Stats. § 440.22, the cost of this proceeding shall be assessed against respondent, and shall be payable to the Department of Regulation and Licensing.

This order is effective on the date on which it is signed by a designee of the Board of Nursing.

OPINION

I. Procedural History

This matter was commenced by the filing of a Notice of Hearing and Complaint on May 25, 2005. A hearing was held in the above-captioned matter on August 4, 2005. Atty. Arthur Thexton appeared on behalf of the Division of Enforcement. The respondent, Sandra L. Wallace, did not file an Answer to the Complaint and did not appear at the hearing.

II. Applicable Laws

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:

(d) Misconduct or unprofessional conduct.

N 7.03 Negligence, abuse of alcohol or other drugs or mental incompetency.

(2) "Abuse of alcohol or other drugs" is the use of alcohol or any drug to an extent that such use impairs the ability of the licensee to safely or reliably practice.

N 7.04 Misconduct or unprofessional conduct. 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;

(15) Violating any rule of the board.

III. Motion for Default

The Notice of Hearing and Complaint were filed with the Administrative Law Judge on May 25, 2005. Ms. Wallace's Answer to the Complaint was due on June 14, 2005. To date, Ms. Wallace has not filed an Answer to the Complaint. She also failed to appear at the hearing held in this matter.

Wis. Adm. Code § RL 2.09 (3) and (4), read as follows:

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

In addition, Wis. Adm. Code § RL 2.14, states, in part, that if the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence.

IV. Summary of Evidence Presented

A. Diversion of Drugs

In addition to the allegations contained in the Complaint that are deemed admitted, evidence was received in the record in the form of testimony, which was provided by Debi Hallam, the Director of Nursing at Virginia Highlands and Katherine (Kitty) Friend, the Nursing Home Administrator at Virginia Highlands, and in the form of documents (Exhibits 1 and 2).

The initial informal complaint that was filed in this matter was made by Kitty Friend, the Nursing Home Administrator at Virginia Highlands Health & Rehabilitation Center. She filed an informal complaint with the Board of Nursing on June 30, 2004 regarding Ms. Wallace's misconduct. According to Ms. Friend, a complaint was made by a family member of patient AW who stated that AW's medications were increasing in costs each month. Ms. Friend offered to look into the matter and determine the reason. During the investigation, which involved Debi Hallam, the Director of Nursing, Ms. Friend and Hospice, they found that additional oxyfast was being ordered and that the family was being charged. It was discovered that one particular nurse, Sandra Wallace, was signing for the missing oxyfast. According to Ms. Friend, the facility's controlled drug use records are signed and in chronological order, for the MD ordered oxyfast. The facility records indicate that the resident did receive the ordered oxyfast, as ordered. However, there were no controlled drug use records for the signed missing oxyfast. Ms. Friend and Ms. Hallam met with the Germantown Police Department on June 23, 2004, to discuss the theft. On June 25, 2004, she and Ms. Hallam interviewed Ms. Wallace. Ms. Friend stated that, during the interview, Ms. Wallace admitted that she took the oxyfast and she voluntarily resigned in lieu of termination. *Exhibit 1, page 1-2.*

Debi Hallam, the Director of Nursing at Virginia Highlands, noted in her report of Ms. Wallace's interview on June 25, 2004, that the investigation started when she was approached by Heartland Hospice regarding one of their residents. They stated that a family member had come to them regarding their bill, because it seemed to get larger and larger each month (AW was a private pay patient on hospice). Ms. Hallam said that while looking through the bills from the pharmacy, it was noted that there was an increase in the amount of oxyfast (liquid morphine) being used on a monthly basis. She went through the resident's active and non-active charts to collect all the narcotic usage records for the medication. When she matched the dates on the bills from the pharmacy, she was unable to account for 11 bottles of oxyfast ever being in the facility for the resident's use. She contacted the pharmacy and asked them to go back into their records and give her the sheets that they signed when a narcotic was brought into the facility. The forms from the pharmacy showed that nurse Sandra Wallace had signed the bottles in to the facility on all 11 occasions. She said that Ms. Wallace worked the weekend program and by matching up dates, it was clear that Ms. Wallace ordered the medication on Saturday for delivery on Sunday when she would be at the facility to receive it. According to Ms. Hallam, Ms. Wallace removed the bottle and the usage sheet so that by Monday no one would know the difference. Ms. Hallam said that since patient AW was a private pay resident, the pharmacy bills never came to the facility. *Exhibit 1, page 3-4.*

B. Abuse of Drugs

During the investigation conducted by Ms. Friend and Ms. Hallam, Ms. Wallace admitted that she took the oxyfast for her own personal use. Comments contained in the interview report relating to Ms. Wallace's use of drugs read as follows [Exhibit 1, p.4]:

(8) I was ok when I came here, was on Vicodin for 5 years, was tapered off.
Take a little here, get me through the night, problems with family, divorce, etc.

Following an evaluation at Genesis Behavioral Services, Inc., Ms. Wallace was diagnosed with opioid dependence. Ms. Wallace participated in treatment for her condition at Genesis Behavioral Services, but was discharged on February 25, 2005, for repeated absence from her aftercare group. *Complaint, paragraph 3; Exhibit 2, p. 118, 146, 154.*

V. Appropriate Discipline

As noted previously, because Ms. Wallace failed to file an Answer to the Complaint and failed to appear at the hearing, she is in default under Wis. Adm. Code § RL 2.14. Therefore, the allegations contained in the Complaint are deemed admitted. The allegations contained in the Complaint, and the evidence received into the record at the hearing, establish that Ms. Wallace violated numerous laws relating to the practice of nursing.

Having found that Ms. Wallace violated statutes and rules relating to the practice of nursing, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Board of Nursing is authorized under Wis. Stats. § 441.07 (1), to reprimand a licensed practical nurse or limit, suspend or revoke the license of a licensed practical nurse for misconduct or unprofessional conduct.

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). Punishment of the licensee is not a proper consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1969).

The Division of Enforcement recommends that Ms. Wallace's license to practice nursing be revoked based upon the evidence of record.

The Administrative Law Judge also recommends that Ms. Wallace's license to practice as a licensed practical nurse be revoked. This measure is designed primarily to assure protection of the public and to deter other licensees from engaging in similar misconduct. Rehabilitation does not appear to be a viable option. Ms. Wallace was given an opportunity to seek rehabilitation, but walked away from the treatment program at Genesis. By diverting oxycodone for her own personal use and by using a hospice patient to obtain the drugs by deceit, she has shown that she is incapable of practicing nursing in a manner

that safeguards the interest of the public. Any measure short of revocation of her license would not provide adequate protection to the public, and would not deter other licensees from engaging in similar misconduct.

VI. Costs of the Proceeding

Wis. Stats. § 440.22(2), 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, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The Administrative Law Judge's 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.

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).

Based upon the record herein, the Administrative Law Judge recommends that the Board of Nursing adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 5th day of December, 2005.

Respectfully submitted,

Ruby Jefferson-Moore
Administrative Law Judge