

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
REBECCA S. HICE, R.N.,	:	LS0510181NUR
RESPONDENT.	:	

Division of Enforcement Case No. 05NUR298

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 March, 2006.

Marilyn Kaufmann
Member of the Board
Board of Nursing

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

REBECCA S. HICE, R.N., :
RESPONDENT :

Case No. LS0510181NUR

PROPOSED DECISION AND ORDER

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

Ms. Rebecca S. Hice
735 College Avenue
Winthrop Harbor, IL 60096

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 February 8, 2006, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by attorney Jeanette Lytle. Ms. Hice 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. Rebecca S. Hice, R.N. (dob 9/11/60) was duly licensed to practice nursing in Wisconsin (License #138018). Her license was first granted on May 8, 2001.
2. Ms. Hice's most recent address on file with the Wisconsin Nursing Board is 735 College Avenue, Winthrop, Illinois.
3. On June 9, 2005, the Board of Nursing (Board) accepted a Stipulation signed by Ms. Hice and issued a Final Decision and Order in the Disciplinary Proceedings against Rebecca S. Hice, R.N. (Case No. LS0306251NUR). In that matter, the Board found that:
 - a. In 1999, 2000, and 2001, Ms. Hice diverted controlled substances in Illinois and obtained drugs other than in the course of legitimate practice and as otherwise prohibited by law, in violation of Wis. Admin. Code § N 7.04 (2).
 - b. On January 16, 2001, Ms. Hice committed fraud in the procuring of her license as a registered nurse in Wisconsin by making an intentionally false statement on her application, in violation of Wis. Stats. § 441.07 (1) (a).
 - c. On April 24, 2002, and on October 22, 2002, Ms. Hice had disciplinary action taken against her Illinois

license to practice as a registered nurse by the Illinois Department of Professional Regulation for diversion of controlled substances and for violation of the April 24 Consent Order, respectively, in violation of Wis. Admin. Code § N 7.04 (7).

- d. On March 28, 2003, Ms. Hice diverted hydrocodone and obtained a drug other than in the course of legitimate practice and as otherwise prohibited by law, in violation of § N 7.04(2), Wis. Admin. Code.

4. Pursuant to its decision regarding Ms. Hice, the Wisconsin Board of Nursing ordered the following:

- a. The suspension of Ms. Hice's license for an indefinite period.
- b. That the suspension would be stayed upon Ms. Hice providing proof sufficient to the Board or its designee, that Ms. Hice was in compliance with conditions and limitations placed on Ms. Hice's license. The limitations related to rehabilitation, monitoring, treatment and practice and included, among other things:
 - i. Treatment in a drug and alcohol treatment program acceptable to the Board.
 - ii. Urine screens at a frequency of not less than 56 times per year for the first year of the Order.
 - iii. Provision of a copy of the Board's Order immediately to supervisory personnel at all settings where Respondent works as a nurse or caregiver or provides health care.

5. To date, Ms. Hice has never provided evidence of compliance with any of the terms of the Board of Nursing Order and has not received a stay of her license suspension.

6. On June 10, 2005, the Board's Final Decision and Order was mailed to Ms. Hice at her last address on file with the Department of Regulation and Licensing.

7. Ms. Hice continued practicing as a registered nurse at Hospitality Nursing and Rehabilitation Center in Kenosha, Wisconsin, from June 10, 2005, until October 11, 2005, while her license was suspended. Ms. Hice's employer terminated her immediately upon discovering that her nursing license was suspended.

CONCLUSIONS OF LAW

1. The Nursing Board has jurisdiction in this matter pursuant to §441.07, Wis. Stats.

2. By failing to file an Answer as required by § RL 2.09, Wis. Admin. Code, and by failing to appear at the hearing, Ms. Hice is in default under § RL 2.14, Wis. Admin. Code, and the Nursing Board may make Findings and enter an Order on the basis of the Complaint and evidence presented at the hearing.

3. Ms. Hice, by having practiced as a registered nurse while her license was suspended, violated a board order contrary to § Nur 7.04 (14), Wis. Admin. Code.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the license of Rebecca S. Hice to practice nursing in the State of Wisconsin shall be **REVOKED**.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed upon Rebecca S. Hice, 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. Hice 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. Hice did not file an answer to the above-captioned complaint, nor did she appear at the scheduled hearing. As a result, Ms. Hice is in default and has effectively admitted all of the allegations contained in the complaint, namely that she continued practicing as a registered nurse at Hospitality Nursing and Rehabilitation Center in Kenosha, Wisconsin, from June 10, 2005, until October 11, 2005, while her license was suspended. Upon discovering that Ms. Hice's license had been suspended, her employer terminated her.

Had Ms. Hice obtained a stay of her suspension and complied with the terms of the June 2005 Board of Nursing Order, she would have been eligible to practice as a registered nurse. However, Ms. Hice never sought a stay of her suspension and was therefore ineligible to practice nursing in Wisconsin.

Because Ms. Hice 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. Hice 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. Hice 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 at Madison, Wisconsin, this 8th day of February, 2006.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION & LICENSING

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Jacquelynn B. Rothstein
Administrative Law Judge