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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
LYNETTA RENDA WEBBER-TATE,	:	LS0601271NUR
RESPONDENT.	:	

Division of Enforcement Case No. 03NUR191

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 20th day of April, 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	:	
	:	PROPOSED FINAL DECISION
	:	AND ORDER
LYNETTA RENDA WEBBER-TATE,	:	LS 0601271 NUR
RESPONDENT.	:	

The parties to this action for the purposes of Section 227.53 of the Wisconsin statutes are:

Lynetta Renda Webber-Tate
613 Trout Street
Tupelo, MS 38801

Wisconsin Board of Nursing
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935

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

A hearing in the above-entitled matter was held on March 7, 2006, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney John R. Zwieg. The respondent did not appear and did not answer the complaint.

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. Lynetta Renda Webber-Tate, Respondent, date of birth September 9, 1966, was licensed by the Wisconsin Board of Nursing as a licensed practical nurse in the state of Wisconsin pursuant to license number 31989, which was first granted September 23, 1993.

2. Respondent did not renew her license as a licensed practical nurse when it expired on April 30, 2005, but could renew it pursuant to Wis. Stat. § 440.08(3)(a) by paying the required fees.

3. Respondent's last address reported to the Department of Regulation and Licensing is 613 Trout Street, Tupelo, MS 38801.

4. From October 2001 to December 2001, the Respondent diverted Demerol brand of meperidine, a Schedule II controlled substance and analgesic, from the Veterans Administration Medical Center (VAMC) in Wood, Wisconsin, where she was employed as a licensed practical nurse. The Respondent recorded that she was giving the Demerol to patients for whom it was not ordered and self administered the medication. The Respondent's employment was terminated.

5. On December 19, 2001, as a result of her conduct at the VAMC, the Respondent was charged in Milwaukee County Wisconsin Circuit Court case number 2001CF006701 with:

- a. One count of Possession of Narcotic Drugs, a violation of Wis. Stat. § 961.41(3g)(a)1, a Class U felony, and
- b. One count of Theft-Movable Property ≤\$2500, a violation of Wis. Stat. § 943.20(1)(a), a Class A misdemeanor.

6. On March 22, 2002, as a result of a plea agreement, the Respondent pled no contest and was found guilty and convicted of those charges.

7. Wis. Stat. §§ 961.41(3g)(a)1 and 943.20(1)(a), are laws substantially related to the practice of practical nursing.

8. On August 10, 2002, the Respondent applied to the Department of Regulation and Licensing (Department) to participate in the Impaired Professionals Procedure (IPP), a non-disciplinary monitoring program that may be offered to credential holders with alcohol and/or drug issues, which allows participants to obtain treatment and ongoing aftercare while returning to safe practice.

9. On November 12, 2002, the Respondent signed an “Agreement for Participation” in IPP and was admitted into the program. Respondent agreed to abide by various conditions set out in the contract, including:

- a. The conditions related to rehabilitation, monitoring, treatment and practice, including submission of quarterly reports documenting her compliance.
- b. Respondent agreed to submit to random, monitored alcohol and drug screens at least 4 times per month.
- c. Respondent agreed to be abstinent of alcohol, controlled substances and prescription drugs not prescribed for a valid medical purpose.
- d. Respondent agreed to have her physician provide a written report to IPP within 3 days of prescribing any medication for a valid medical purpose.

10. The Respondent never complied with any of the conditions. As a result, on May 9, 2003, the IPP Coordinator sent Respondent a letter notifying her that if she did not carry out her IPP responsibility to submit quarterly reports and begin the drug screening process by May 23, 2003, she would be dismissed from IPP and her file will be referred to the Division of Enforcement for disciplinary action.

11. The Respondent never responded to the IPP Coordinator and on May 23, 2003, the Board dismissed her from the IPP and referred her to the Division of Enforcement.

12. The Division of Enforcement wrote to the Respondent at her Milwaukee address on September 25, 2003 and January 20, 2004 requesting information. The Respondent never replied to those 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. The Respondent, by engaging in the conduct set out in the Findings of Fact, by diverting Demerol from her employer, obtained a drug other than in the course of legitimate practice and as otherwise prohibited by law and committed misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(2) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

3. The Respondent by engaging in the conduct set out in the Findings of Fact has violated laws substantially related to practice under her license, and has committed misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(1), which subjects the Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).

Order

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Lynetta Renda Webber-Tate to act as a licensed practical nurse is REVOKED.

IT IS FURTHER ORDERED that the right of Lynetta Renda Webber-Tate to renew her license as a licensed practical nurse is REVOKED.

IT IS FURTHER ORDERED that Lynetta Renda Webber-Tate pay the assessable costs of this proceeding.

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:

...

(d) Misconduct or unprofessional conduct.

Wis. Admin. Code N 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).

Opinion

On January 27, 2006, the Department of Regulation and Licensing, Division of Enforcement filed a Complaint and Notice of Hearing alleging violations of professional licensing and standards by the respondent. An Affidavit of Mailing indicates that on January 27, 2006, the documents were sent to the respondent's last known address of 613 Trout Street, Tupelo, MS 38801. A return receipt dated "2-2-06", bearing a signature appearing to be that of Lynetta Webber 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.

At the evidentiary hearing of this matter the Division of Enforcement filed a motion for default which was granted. The motion for default requested that the administrative law judge deem the allegations in the complaint admitted by the respondent based upon her failure to appear or answer. Also requested was that the discipline in this case be revocation of the respondent's license to act as a licensed practical nurse, revocation of the right to renew 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 the regulations governing professional conduct. The respondent diverted controlled substances, to which she had professional access by virtue of her credential. Such actions are a crime and a basis for professional discipline.

The respondent's conduct creates a risk to the health, safety and welfare of the public. The first risk created is that her diversion would lead to impaired practice which could harm patients. The second risk is that such conduct is inevitably tied to the potential of diverting controlled substances from patients to control pain. This second risk would result in untreated patient pain, leading to unwarranted suffering. Such conduct demonstrates a disregard for the rights of patients, disregard of the importance of following the laws related to controlled substances use, and the abuse of the professional privilege granted to her by virtue of her credential.

The respondent has presented no evidence in mitigation of these circumstances. Absent any evidence of rehabilitation, a revocation of the respondent's license is appropriate. The respondent's enrollment in the Impaired Professionals Procedure represented a second chance for her to demonstrate a willingness to recognize her substance abuse problem and take responsibility for it. After being given this second chance the respondent abandoned any attempt to demonstrate that she was serious about taking responsibility for her actions. More importantly, her failure to comply with the requirements of the Impaired Professionals Procedure demonstrates that she does not consider continued practice as a licensed practical nurse to be a goal worth achieving. Accordingly, revocation remains the only viable option to protect the public.

Revocation 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 respondent's conduct jeopardizes patient health, welfare and safety when health care decisions are made by professionals under the influence of inappropriately used controlled substances. Her conduct also violates the special trust placed in her by society to assure that controlled substances, which can both heal and hurt, are used appropriately. Revocation of her license sends a proper message to deter other licensees from engaging in

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".

Date: March 24, 2006

William Anderson Black
Administrative Law Judge