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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
KATHLEEN M. HART, R.N., RESPONDENT.	:	LS0705171NUR

Division of Enforcement Case No. 05NUR358

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 30th day of August, 2007.

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
KATHLEEN M. HART, R.N., : LS 0705171 NUR
RESPONDENT : 05 NUR 358

PARTIES

The parties to this action for the purposes of s. 227.53 Stats., are:

Kathleen M. Hart
2351 53rd Street
Somerset, WI 54025

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

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

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on June 19, 2007, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney John R. Zwieg. The respondent, Kathleen M. Hart, did not appear and did not file an answer to the complaint. Based on the entire record of 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. Kathleen M. Hart, Respondent, date of birth June 24, 1961, was licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 142255, which was first granted July 19, 2002.

2. Respondent's last address reported to the Department of Regulation and Licensing is 2351 53rd Street, Somerset, WI 54025.

3. During the events of this matter until her employment was terminated on November 11, 2005, Respondent was employed as a registered nurse at St. Croix Valley Good Samaritan Center (Good Samaritan Center) in St. Croix Falls, Wisconsin.

4. On January 16, 2004, at approximately 9:30 p.m., Respondent was driving in Somerset on her way to work a scheduled shift as a nurse at Good Samaritan Center, 25 miles away, when she was stopped by a police officer who observed Respondent swerving and driving erratically:

a. The officer smelled a strong odor of intoxicants and conducted field sobriety tests which Respondent failed.

b. Respondent was so intoxicated she thought she was in St. Croix Falls rather than Somerset.

c. Her preliminary breathalyzer test (PBT) and the breathalyzer performed at the police station both

showed a blood alcohol concentration (BAC) of .12.

d. The officer searched Respondent's vehicle and found and confiscated six bottles of over-the-counter ephedrine which contained a total of 149 25 mg. doses. Respondent told the officer that she used the ephedrine to stay awake at work. Ephedrine is a central and sympathetic nervous system stimulant.

e. Respondent was arrested and taken to the Somerset Police Department.

f. On March 24, 2004, Respondent appeared in Somerset Municipal Court and was convicted of OWI (operating a motor vehicle while intoxicated).

g. On April 16, 2004, Respondent had a court-ordered AODA assessment performed which resulted in a final diagnosis of Irresponsible Use of Alcohol – Borderline/305.00 Alcohol Abuse and 305.90 Drug Abuse unspecified.

5. Throughout 2005, Respondent received prescriptions for Ambien, 10 mg., on a continuing regular basis from a family practice physician at the Somerset Clinic. Respondent reported to the physician that she worked the night shift and had difficulty sleeping and that she had been taking Ambien on a p.r.n. basis for several years. Ambien is a brand of zolpidem tartrate, a sedative hypnotic indicated for short-term treatment of insomnia and a schedule IV controlled substance.

6. On December 20, 2005, Respondent saw a psychiatrist at Hudson Physicians in Hudson, Wisconsin, for a psychiatric evaluation. Respondent reported:

a. She had taken some Adderall from her boyfriend and it made her feel wonderful. Adderall is a brand of amphetamine, a central and sympathetic nervous system stimulant and a schedule II controlled substance.

b. She had been taking Prozac off and on since 1994 for seasonal affective disorder and PMS.

c. She did not sleep well at night and had been taking Melatonin, a non-prescription hormone which may help with sleep.

d. Her biological mother had bipolar disorder.

7. The psychiatrist diagnosed Respondent with Mood Disorder NOS (269.9) and gave her a prescription for Seroquel at night for sleep and Adderall in the morning "to get going." Seroquel is a brand of quetiapine, a psychotropic agent used as an anti-psychotic medication and to treat bipolar disorder and other conditions.

8. The Division of Enforcement asked the family practice physician and the psychiatrist whether they knew that Respondent was obtaining medications from the other and whether they knew about Respondent's AODA abuse issues. The family practice physician said that she did not know Respondent was receiving the medications from the psychiatrist and said that based on that information, she would no longer prescribe Ambien to Respondent. The psychiatrist said that he did not know Respondent had been receiving Ambien from the family practice physician and did not know about Respondent's use of alcohol and ephedrine.

9. On April 12, 2006, Respondent was cited for having violated Wis. Stat. § 346.63(1)(a) – Operating While under Influence (2nd offense) and Wis. Stat. § 346.63(1)(b) – Operating with PAC .08 or more (2nd offense).

a. On May 23, 2006, Respondent was charged in St. Croix County Wisconsin Circuit Court case number 2006CT000184 with those violations.

b. On September 18, 2006, as a result of a plea agreement, Respondent pled no contest and was found guilty and convicted of one count of violating Wis. Stat. § 346.63(1)(a) – Operating While under Influence (2nd), and the count of Operating with PAC .08 or more (2nd) was dismissed.

c. Respondent was sentenced to:

1) 20 days in jail (10 days were stayed upon the condition she have no other drug or alcohol offenses with the next year.

2) AODA assessment and follow recommended treatment.

10. The Adderall that Respondent obtained from her boyfriend was a schedule II controlled substance which required the order of a practitioner and Respondent had no such order.

11. On November 8, 2005, administrators and RN staff at Good Samaritan Center discovered several pages were missing

from three different narcotic record books. Further investigation disclosed that Respondent had completed three records of destroying patients' unneeded controlled substances and had forged the signature of another nurse on the document to indicate that nurse had witnessed the destruction of the controlled substances. The forms indicated that Respondent had on September 11 and 12, 2005, destroyed 30 and 7 units of hydrocodone/APAP, 5mg./500 mg., an analgesic which is a schedule III controlled substance, and 22 units of Lorazepam, .5 mg., a sedative hypnotic which is a schedule IV controlled substance.

12. On November 9, 2005, Good Samaritan Center's Director of Nursing (DON) called Respondent and left two messages for Respondent to call the DON. The DON intended to tell Respondent her employment was suspended and to schedule an investigative interview of Respondent. Respondent never returned the calls to the DON and did not show up for her scheduled 10:00 p.m. shifts on November 9 and 10, 2005, or call to say that she would not be working the shifts. On November 11, 2005, Respondent's employment was terminated based on her failure to report to work without notifying her supervisor.

13. On May 17, 2007, the Respondent was served with the Notice of Hearing and Complaint, dated May 17, 2007, at her last address reported to the Department of Regulation and Licensing, 2351 53rd Street, Somerset, WI 54025

CONCLUSIONS OF LAW

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

2. The conduct described in Findings of Fact 4 through 9, constitutes unprofessional conduct by the Respondent within the meaning of Wis. Admn. Code § N 7.03(2), and the Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1)(c).

3. The conduct described in Finding of Fact 10, constitutes misconduct or unprofessional conduct by the Responden within the meaning of Wis. Admn. Code § N 7.04(2), and the Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

4. The conduct described in Findings of Fact 11 and 12, constitutes unprofessional conduct by the Respondent within the meaning of Wis. Admn. Code § N 7.04(6), and the Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Respondent, Kathleen M. Hart's license for practice as a registered nurse in Wisconsin, number 142255, is REVOKED.

IT IS FURTHER ORDERD that costs of this proceeding shall be assessed against the Respondent.

OPINION

Applicable Law

Wis. Stat. § 441.07

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.

(d) Misconduct or unprofessional conduct.

Wis. Admn. Code § N 7.03 (2)

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.

Wis. Admn. Code § N 7.04 (2), (6)

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:

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

(6) Falsifying or inappropriately altering patient records;

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. In this case, the respondent did not file an answer to the above-captioned complaint, nor did she appear at the scheduled hearing. As a result, the respondent is in default. The attorney for the complainant moved for an order granting default at the hearing. That motion was granted.

It has been requested that the discipline to be imposed be that of revocation. After review of the allegations forming the basis for discipline in this case, that request is appropriate.

The respondent has demonstrated extreme disregard for the personal and private health care rights of patients. On one occasion in 2004, she was stopped by the police on her way to work, while impaired with a prohibited alcohol concentration of .12. The respondent was cited subsequently in 2006 for Operating While under the Influence, with a prohibited alcohol concentration of .08. During this time the respondent was also engaged in obtaining controlled substances other than in the course of legitimate medical treatment. It is clear that the respondent has a problem with alcohol and the abuse of controlled substances. To protect the public, caregivers such as the respondent must undertake their professional duties with the utmost regard for their patients and peers. This clearly is not the case with the respondent.

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 therefore protect the public, have a rehabilitative effect on the respondent, or deter other licensees from engaging in similar conduct. The respondent has not come forward to show remorse, an explanation, or cooperation with the board in this matter. The respondent has not demonstrated any interest in rehabilitation. To not revoke the respondent's license would instead wrongly signal others to engage in similar conduct. Revocation remains as the only way in which to safeguard the public.

Costs

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 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.

Date: July 5, 2007

_____

William Anderson Black
Administrative Law Judge

Hart7-5-07WAB