

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
: FINAL DECISION AND ORDER
JANICE FAY LYONS, L.P.N., : LS 0709201 NUR
RESPONDENT. :

[Division of Enforcement Case #'s 05NUR177, 06NUR229, 06NUR407, 07NUR050 & 07NUR051]

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

Janice Fay Lyons, L.P.N.
3657 S. 32nd Street
Greenfield, WI 53221

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

Wisconsin Board of Nursing
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

This disciplinary proceeding was commenced by the filing and service of a Complaint and Notice of Hearing on September 20, 2007. The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board of Nursing. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Janice Fay Lyons, L.P.N., Respondent, date of birth July 13, 1957, is licensed by the Wisconsin Board of Nursing as a licensed practical nurse in the state of Wisconsin pursuant to license number 302534, which was first granted May 2, 2000.

2. Respondent's last address reported to the Department of Regulation and Licensing is 3657 S. 32nd Street Greenfield, WI 53221.

COUNT I [07NUR050]

3. On March 18, 2003, Respondent was employed as a licensed practical nurse at Mount Carmel, a nursing home in Greenfield, Wisconsin. While at work, Respondent took a driver's license and Tyme/Check card from a co-worker's wallet which was in the co-worker's purse. Respondent did not have the co-worker's permission to take or use the card, which she used to purchase a \$100 DVD player and another item. The next day, Respondent returned the driver's license and Tyme/Check card to the co-worker's wallet, without telling the co-worker.

4. When the co-worker discovered the unauthorized purchase, it was reported to the police who conducted an investigation. As a result of the police investigation:

a. On April 1, 2003, Respondent was charged in Milwaukee County Wisconsin Circuit Court case number 2003CM002710 with one count of Theft-False Representation <=\$2500, a Class A misdemeanor, in violation of Wis. Stat. § 943.20(1)(d).

b. On July 18, 2003, Respondent pled no contest and was found guilty and convicted of violating Wis. Stat. 943.20(1)(d) – Theft-False Representation <=\$2500. Respondent was ordered to pay a fine of \$500 plus costs.

5. Wis. Stat. § 943.20(1)(d) – Theft-False Representation is a law substantially related to the practice of practicing nursing.

COUNTS II and III [07NUR051]

6. In September 2003, Respondent was employed as a licensed practical nurse and was working at Mercy Residential & Rehab (facility) in Milwaukee, Wisconsin. Patient A was admitted to the facility on September 17. Respondent worked the AM shift on Saturday, September 20 and the PM shift on Sunday, September 21 and was assigned to Patient A's care.

a. On September 20, Respondent completed a "Physician's Telephone Order" form and dated it September 19, which purported to reflect a physician's telephone order by Patient A's physician for Patient A to receive 10 mg of Valium twice a day. Valium is a brand of diazepam and a schedule IV controlled substance. Respondent then signed the order using the name of another nurse, who had worked the day shift on September 19 and did not work on September 20.

b. The document was false because the physician did not make any such telephone order for Patient A and was not prepared by the nurse whose purported signature was placed on the form.

c. On September 20, at 12:30 p.m., Respondent faxed the false telephone order for 10 mg Valium to pharmacy to be filled and delivered to the facility.

d. Respondent did not place the original of the "Physician's Telephone Order" form in the chart or enter the purported telephone order as a physician's order or in a nursing note or anywhere else in the patient's chart.

e. On September 20, the pharmacy dispensed a blister card containing 30 10 mg Valium and delivered it to the facility at approximately 9:30 p.m. that day. Staff at the facility prepared a narcotic count sheet.

f. On September 24, staff discovered that this Valium and the corresponding narcotic count sheet were missing. Two other nurses began a search and among other places, carefully examined the interior of a cabinet which was being used to hold discontinued medications and discharged residents' medications, until they were destroyed. The Valium was not in that cabinet.

g. On September 25 at approximately 11:30 a.m., all medications were then removed from the cabinet to be destroyed. Another nurse who was destroying those drugs noticed that some liquid morphine was missing. She asked Respondent to look for the morphine so it could be destroyed and told her it was probably in the medication cart. Instead of looking on the cart, Respondent opened the same cabinet, which had recently been emptied of all medications, reached inside and then set on the counter the blister pack of Valium and its narcotic count sheet, which had been in her possession, and falsely said she had found it in the cabinet.

h. Respondent denies falsifying the telephone order, faxing it to the pharmacy and taking the medications for her self. However, Respondent agrees there is sufficient evidence to support the Board making the findings that she did these things.

COUNT IV [05NUR177]

7. This Count alleged that Respondent, while employed as a licensed practical nurse at the Jewish Home and Care Center in Milwaukee, Wisconsin on June 29, 30 and July 3 and 4, 2005, diverted the controlled substances hydrocodone and oxycodone from two patients for her own use without the order of a practitioner.

8. Respondent denies diverting the medications for her own use and as part of the resolution of this matter Complainant has agreed to the dismissal of this count.

COUNT V and IV [06NUR229]

9. Respondent was employed by Maxim Healthcare Services as a licensed practical nurse and provided nursing care to patients in their home. In January 2006, Respondent was assigned to care for Infant A (DOB 11/10/05) in Milwaukee Wisconsin.

10. During the time Respondent provided nursing services in the home of the parents and Infant A, Respondent stole the following items from the home, without the consent of the owners:

- a. 15 tablets of Tylenol #3 with codeine, a schedule III controlled substance.
- b. Piggy bank containing about \$25.00.
- c. Personal checks, gas cards and Target gift cards.
- d. A Game Boy, Leap Pad and games, Nintendo DS and games.
- e. Baby outfits, Barney T-shirts, burp cloths and a frying pan, among other things.

11. Respondent denies stealing the items. However, Respondent agrees there is sufficient evidence to support the Board making the findings that she did so.

COUNT VII [06NUR407]

12. On November 5, 2006, Greenfield Police were called to a disturbance and upon arriving at the scene, met with Respondent. The officers discovered that Respondent had an outstanding arrest warrant under her maiden name and took her into custody and transported her to the Police Department.

13. A clerk at the Police Department searched Respondent and found a small plastic baggie containing 376 pills in Respondent's jeans pocket. Respondent told an officer that the pills were hers and that she bought them off of the Internet.

14. The medications found in Respondent's possession consisted of the following:

- a. 22 units of diazepam, a schedule IV controlled substance.
- b. 69 units of Ambien, a schedule IV controlled substance.
- c. 107 units of alprazolam a schedule IV controlled substance.
- d. 3 units of clonazepam, a schedule IV controlled substance.
- e. 19 units of temazepam, a schedule IV controlled substance.
- f. 128 units of clorazepam, a schedule IV controlled substance.
- g. 26 units of lorazepam, a schedule IV controlled substance.
- h. 2 units of Sonata, a schedule IV controlled substance.
- i. 4 units of Lunesta, a schedule IV controlled substance.
- j. 3 units of Rozerem, a legend drug which requires a prescription.
- k. 1 unit of Methadone, a schedule II controlled substance.

15. Respondent admits that she did not have any prescription or other order of a practitioner which allowed Respondent to receive or have possession of any of the medications. Respondent contends that she ordered all of these prescription medications from internet pharmacy sites without a prescription and thought it was legal to do so. There is no evidence to support Respondent's contention that she obtained the medications in the manner she describes.

16. Wis. Stats. §§ 450.11(7)(h), 961.41(3g)(am) and 961.41(3g)(b) prohibit possession of prescription drugs, Schedule II controlled substances and Schedule IV controlled substances, respectively, without a valid order of a practitioner. Respondent's possession of these drugs was in violation of these laws which substantially relate to the practice of nursing.

COUNT VIII

17. On April 22, 1996, Respondent was charged in Santa Rosa County Florida Circuit Court case number 96-280 CFA, with one count of obtaining a controlled substance by fraud or forging a prescription, in violation of Section 893.13(7)(a)9 and 893.13(7)(c) of the Florida Statutes. On September 5, 1996, Respondent pled no contest and was found guilty and convicted of the charge. Sentence was withheld and Respondent was placed on probation for two years under the supervision of the Department of Corrections.

18. The basis for the charge was that Respondent removed a prescription pad from the office of a physician for whom she worked, completed it herself for 100 units of Soma 350 mg and 90 units of Valium 10 mg, gave the forged prescription to a companion and told him to take it to a certain pharmacy and have it filled.

COUNT IX

19. Prior to being granted a license as a practical nurse in Wisconsin on May 2, 2000, Respondent completed an application for licensure which she submitted to the Wisconsin Board. The application form included a question which asked if the applicant had ever been convicted of a crime. Although Respondent had been convicted of the crime of obtaining controlled substance by fraud in Florida in 1996, Respondent answered “no” to that question on the application.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).
2. Respondent, by engaging in the conduct set out in Count I, has violated a law substantially related to practice under her license, which is misconduct or unprofessional conduct as defined by Wis. Adm. Code § N 7.04(1), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).
3. Respondent, by forging a false telephone order, as set out in Count II, falsified patient records, which is misconduct or unprofessional conduct as defined by Wis. Adm. Code § N 7.04(6) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).
4. Respondent, by obtaining and attempting to obtain a controlled substance without the order of a practitioner, as set out in Count III, has violated a law substantially related to practice under her license and obtained a drug as prohibited by law, which is misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(1) & (2), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).
5. Complainant having agreed to the dismissal of Count IV, there is insufficient evidence in the record to support the allegations of Count IV.
6. Respondent, by engaging in the conduct set out in Count V, obtained things of value from a patient without the patient's consent, which is misconduct or unprofessional conduct as defined by Wis. Adm. Code § N 7.04(12), and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).
7. Respondent, by obtaining and attempting to obtain a controlled substance without the order of a practitioner, as set out in Count VI, has violated a law substantially related to practice under her license and obtained a drug as prohibited by law, which is misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(1) & (2), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).
8. Respondent, by engaging in the conduct set out in Count VII above, has violated a law substantially related to practice under her license and obtained a drug as prohibited by law, which is misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(1) & (2), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).
9. Respondent, by engaging in the conduct set out in Count VIII, has violated a law substantially related to practice under her license and obtained drugs as prohibited by law, which is misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(1) & (2), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).
10. Respondent, by answering "no" to the question on her application for licensure inquiring if she had been convicted of a crime, as set out in Count IX, has procured her license by fraud with subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(a).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The license of Respondent Janice Fay Lyons, L.P.N., as a practical nurse in the state of Wisconsin is hereby REVOKED.
2. Wis. Stat. § 441.07(2) provides that the Board may reinstate a revoked license, no earlier than one year following revocation, upon receipt of an application for reinstatement. If Respondent applies for reinstatement anytime after one year from the date of this Order:
 - a. She shall provide proof sufficient to the Board that she does not suffer from any alcohol or drug related condition or other psychological condition which impairs her ability to function under the credential.

b. The decision whether to grant Respondent a credential, with or without limitations, shall be in the sole discretion of the Board.

c. Prior to any reinstatement, she shall have paid the costs of this proceeding in the amount of \$4,477.22, pursuant to Wis. Stat. § 440.22(2). Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed or delivered to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264

3. This Order is effective on the date of its signing.

Wisconsin Board of Nursing

By: Kathleen Sullivan
A Member of the Board

6/5/08
Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

JANICE FAY LYONS, L.P.N.,
RESPONDENT.

:
:
:
:
:

STIPULATION
LS 0709201 NUR

[Division of Enforcement Case #'s 05NUR177, 06NUR229, 06NUR407, 07NUR050 & 07NUR051]

It is hereby stipulated and agreed, by and between Janice Fay Lyons, L.P.N., Respondent; Nikola Kostich, attorney for Respondent; and John R. Zwieg, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary proceeding against Respondent's licensure by the Division of Enforcement (files 05NUR177, 06NUR229, 06NUR407, 07NUR050 & 07NUR051). Respondent consents to the resolution of this matter by stipulation and without a hearing.

2. Respondent understands that by signing this Stipulation, she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has obtained advice of legal counsel prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. Attached to this Stipulation are Respondent's current wall and wallet registration certificates. If the Board does not accept this Stipulation, Respondent's certificates shall be returned to Respondent with a notice of the Board's decision not to accept the Stipulation.

7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or her attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

8. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

9. Respondent is further informed that should the Board adopt this Stipulation, Counts II, III and IV of the Board's Final Decision and Order would constitute an agency finding within the meaning of Wis. Stats. §§ 48.685 and 50.065.

Should Respondent wish to work in a Wisconsin DHFS-licensed facility, she will need to pass a Rehabilitation Review through DHFS prior to commencement of such employment.

10. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Janice Fay Lyons, L.P.N.
Respondent
3657 S. 32nd Street
Greenfield, WI 53221

Date

Nikola Kostich
Law Offices of Nikola Kostich
735 W. Wisconsin Avenue, Suite 800
Milwaukee, WI 53233

Date

John R. Zwieg
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date