

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

KRISTIE L. RYNDERS, R.N.,
RESPONDENT.

:
:
AND ORDER
LS0709202NUR

Division of Enforcement Case No. 07NUR072

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 4th day of September, 2008.

Kaufmann
Board

Marilyn
Member of the
Board of Nursing

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS

KRISTI L. RYNDERS, R.N.,
RESPONDENT.

PROPOSED
FINAL DECISION AND ORDER AGAINST
Case No. LS-0709202-NUR

[Division of Enforcement Case No. 07 NUR 72]

PARTIES

The parties in this matter for purposes of Wis. Stat. s. 227.53 are:

Complainant:

Attorney Arthur Thexton
Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Ave.
Madison, WI 53708-8935

Respondent:

Kristi L. Rynders
4626 S 20 St, Apt. 5
Milwaukee, WI 53221

Disciplinary Authority:

Board of Nursing
1400 East Washington Ave.
Madison, WI 53703

PROCEDURAL HISTORY

This is a disciplinary action against respondent Kristi L. Rynders, R.N. On September 20, 2007, a Complaint and Notice of Hearing was filed and served on the respondent by certified and first class mail. The respondent has failed to file an answer or other responsive pleading. The complainant filed a Motion for Default on October 18, 2007. A hearing was held on January 3, 2008, at which time evidence was introduced by the complainant. Ms. Rynders did not appear in person or by a representative. The complainant was represented by Attorney Arthur Thexton.

FINDINGS OF FACT

1. Kristi L. Rynders (dob: 5/26/68) is and was at all times relevant to the facts set forth herein a professional nurse licensed in the State of Wisconsin pursuant to license #117694. This license was first granted 8/17/94. Her address of record is 4626 S. 20th St. Apt. 5, Milwaukee, WI 53221.
2. On 1/11/07, and while employed as a professional nurse at the Golden LivingCenter—Heritage Square, a skilled nursing facility in Greendale, Wisconsin, respondent diverted a Schedule II controlled substance, an oxycodone product, from a resident for her personal use. Respondent administered acetaminophen to a resident who had been prescribed oxycodone with acetaminophen. Respondent had signed out two oxycodone tablets for the resident. When asked why she only gave the resident acetaminophen, respondent falsely stated that the resident had declined the oxycodone product and had requested acetaminophen. The resident stated that she had not refused the oxycodone and did not ask for acetaminophen. The acetaminophen was inadequate to ease the resident's pain that was an 8 on a scale of 0 to 10.
3. On 1/30/07, at the same facility, the pharmacy delivered five medication "cards" including one with 30 tablets of oxycodone with acetaminophen, a Schedule II controlled substance. Respondent removed the entire "card" of oxycodone, which was billed to the resident for whom it had been prescribed, thus diverting the medication to her own use.
4. On 1/31/07, respondent was required to submit a sample of urine from her body, which was analyzed and found to contain the following and/or their metabolites: hydromorphone, oxycodone, and marijuana.

5. Pursuant to Wis. Stats.s. 961.16(2)(a) 8. and 11., hydromorphone and oxycodone are schedule II controlled substances.

6. A valid prescription, in the possessor's name, is required for lawful possession of schedule II controlled substances. See Wis. Stat. s. 961.41(3g). The respondent did not have a prescription for oxycodone or hydromorphone..

7. Respondent did not respond in a timely manner to a Board inquiry regarding this matter.

8. On September 20, 2007 the complainant sent by certified and first class mail the Complaint in this case to Kristi Rynders at the last address on file with the Department of Regulation and Licensing (Department). The certified copy of the Complaint was returned to the Department on October 22, 2007, marked Returned to Sender.

9. The Department has not received an answer or any other correspondence from Kristi L. Rynders.

10. On October 30, 2007, the Administrative Law Judge sent by first class mail a Notice of Hearing to the respondent at the last address on file with the Department. The Notice of Hearing was not returned.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction to act in this matter, pursuant to Wis. Stat. s. 441.07.

2. By failing to file an Answer as required by Wis. Admin. Code s. RL 2.09, respondent is in default under Wis. Admin. Code s. RL 2.14, and the facts stated in the Complaint are admitted. Wis. Admin. Code s. RL 2.09(3).

3. The conduct described in paragraph 2 constitutes negligence toward, and abuse of, a patient by the respondent in violation of Wis. Adm. Code ss. N 7.03(1)(d) and 7.04(4).

4. The conduct described in paragraphs 2, 3 and 4 constitutes negligence by the respondent violation of Wis. Admin. Code s. N 7.03(2).

5. The conduct described in paragraphs 2 and 3 constitutes misconduct by the respondent in violation of Wis. Admin. Code s. 7.04(12).

6. The conduct described in paragraphs 4, 5 and 6 constitutes misconduct by the respondent violation of Wis. Adm. Code s. RL 7.04(2).

6. The respondent received proper notice of this action from the Department of Regulation and Licensing when it mailed a copy of the Notice of Hearing and Complaint to the respondent's last known address filed with the department. Wis. Stats. s. 440.11(1) and (2) and Wis. Admin Code s. RL 2.08(1).

ORDER

THEREFORE, IT IS ORDERED that the license of respondent Kristi L. Rynders to practice as a nurse in the State of Wisconsin is **REVOKED**. The privilege of respondent to practice as a nurse in the State of Wisconsin under the authority of another state license pursuant to the Nurse Licensure Compact is also **REVOKED**.

IT IS FURTHER ORDERED that respondent Kristi L. Rynders pay the costs of this proceeding, as authorized by Wis. Stat., s. 440.22 (2), Stats., and Wis. Admin. Code s. RL 2.18, Wis. Admin. Code. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817

IT IS FURTHER ORDERED that Kristi L. Rynders may not reapply for a license until the costs have been paid.

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

APPLICABLE LAW

440.11 Change of name or address.

(1) An applicant for or recipient of a credential who changes his or her name or moves from the last address provided to the department shall notify the department of his or her new name or address within 30 days of the change in writing or in accordance with other notification procedures approved by the department.

(2) The department or any examining board, affiliated credentialing board or board in the department may serve any process, notice or demand on the holder of any credential by mailing it to the last-known address of the holder as indicated in the records of the department, examining board, affiliated credentialing board or board.

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 incompetence.

(d) Misconduct or unprofessional conduct.

RL 2.08 Service and filing of complaint, notice of hearing and other papers.

(1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14(2), Stats. Service by mail is complete upon mailing.

RL 2.09 Answer

(1) An answer to a complaint shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(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.

RL 2.14 Default. If the respondent fails to answer as required by RL 2.09 to appear at the hearing at the time fixed therefor, 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. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before

the disciplinary authority enters an order or within a reasonable time thereafter.

N 7.03 Negligence, abuse of alcohol or other drugs or mental incompetency. (1) As used in § 441.07(1)(c), Stats, “negligence” means a substantial departure from the standard of care ordinarily exercised by a competent licensee. “Negligence” includes but is not limited to the following conduct:

(d) Failing to execute a medical order unless the order is inappropriate and the licensee reports the inappropriate order to a nursing supervisor or other appropriate person;

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 ...;

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

(4) Abusing a patient by any single or repeated act of force, violence, harassment, deprivation, neglect, or mental pressure which reasonably could cause physical pain or injury, or mental anguish or fear;

(12) Obtaining or attempting to obtain anything of value from a patient without the patient’s consent;

961.16 Schedule II. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule II:

(2)(a).....

8. Hydromorphone, also known as dihydromorphinone.....

11. Oxycodone.

961.41 Prohibited acts A – penalties

(3g) Possession. No person may possess or attempt to possess a controlled substance or a controlled substance analog unless the person obtains the substance or the analog directly from, or pursuant to a valid prescription or order of, a practitioner who is acting in the course of his or her professional practice, or unless the person is otherwise authorized by this chapter to possess the substance or the analog. Any person who violates this subsection is subject to the following penalties:

OPINION

This case is being decided as a default proceeding because the respondent did not answer the complaint, did not respond to the complainant’s attempts to contact her and failed to attend the hearing. 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. When a respondent is in default all of the facts in the Complaint are deemed to be true and the Board of Nursing may make findings and enter an order based on the findings of fact in the Complaint. The decision in this case is based upon the facts in the Complaint and other evidence regarding notice to the respondent.

The main issue for consideration in this matter is whether Kristi L. Synders violated the laws governing the practice of nursing and whether discipline should be imposed. It is the opinion of this Administrative Law Judge that her actions violated the laws governing the practice of nursing and that her license should be revoked. Revocation of her license is

needed to protect her patients and the public. The state's purpose in licensing professionals is to protect its citizens. *Strigenz*, 103 Wis.2d 281, 286, 307 N.W.2d 664, 667. License revocation is the ultimate means of protecting the public short of fining or imprisonment. *Strigenz*, at 287.

On January 11, 2007 while working at the Golden Living Center – Heritage Square, a nursing home, the respondent diverted oxycodone, a schedule II controlled substance, that was prescribed for one of her patients. Instead of the prescribed oxycodone the respondent gave the resident acetaminophen for the resident's pain. When asked why she only gave the resident acetaminophen the respondent said that the resident did not want the oxycodone. The resident denied that and reported that at that time her pain level was an 8 on a scale of 10 and that the acetaminophen was inadequate to relieve her pain. These actions are violations of the laws governing the practice of nursing. When the respondent failed to give her patient the ordered medication she failed to carry out a physician's order and when she took her patient's medication she took it without the consent of the patient. Wis. Admin. Code s. N 7.03(1)(d) and 7.04(12).

Later that month on the 30th the respondent removed one entire "card" of five medication cards of oxycodone delivered to the nursing home. The card of oxycodone was prescribed for and billed to a particular resident. It is unclear if the resident received the oxycodone but it is clear that the respondent stole the drugs.

On January 31, 2007 the respondent submitted a sample of urine which was found to contain hydromorphone, oxycodone and marijuana and/or their metabolites. Hydromorphone and oxycodone are schedule II controlled substances. Wis. Stats., s. 961.(2)(a)7. and 11. Wisconsin law makes it a punishable crime to possess schedule II controlled substances without a valid prescription. Wis. Stats., s. 961.41(3g).

One can reasonably infer from the facts that the respondent did not have a prescription for hydromorphone and oxycodone. The respondent therefore possessed controlled substances in violation of state law. Section RL 7.04(2) of the Wisconsin Administrative Code says that it is misconduct or unprofessional conduct for a nurse to obtain any drug other than in the course of legitimate practice or as otherwise prohibited by law. The respondent did not obtain the hydromorphone or oxycodone in the course of legitimate practice and did not possess them legally. The respondent therefore is guilty of misconduct or unprofessional conduct.

One can also reasonably infer from the facts that the respondent has a substance abuse problem and that her problem lead to her taking her patient's medication and a card of oxycodone. It is negligence under the rules governing the practice of nursing if the respondent's abuse of drugs impairs his or her ability to safely or reliably practice. Wis. Admin. Code s. N 7.03(2). The respondent's actions in taking the medications were a result of her substance abuse problem that impaired her ability to safely or reliably practice nursing. She was not safely or reliably practicing nursing when she took her patient's prescribed drugs and left her with inadequate pain relief. It is also misconduct or unprofessional conduct if a nurse abuses her patient by neglect which reasonably could cause physical pain. Any single incident constitutes abuse. Wis. Admin. Code s. N 7.04(4). The respondent both neglected her patient and caused her pain when she did not give her patient the oxycodone. The respondent therefore abused her patient.

A nurse's duty is to ensure the proper care and treatment of his or her patients. That responsibility must be fulfilled before a nurse's personal needs are met. The uncontested facts in this case show that the respondent failed to put her patients' needs and safety before her own. In fact, she ignored her patient's needs to take care of her own, she stole from her patient, caused her patient pain, abused her patient, placed her in danger and did not carry out a physician's order. Those are egregious violations of a nurse's duty.

The next question to be considered is the nature of the discipline that should be imposed on 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 have a rehabilitative effect on the respondent or that she is even interested in being rehabilitated. The conduct proven demonstrates an indifference to the health, safety and welfare of patients. The failure of the respondent to answer or

otherwise participate in this proceeding indicates that less severe avenues that rely upon the respondent's participation and cooperation will not be useful. Considering her lack of cooperation as an indication of future action, it is unlikely that the respondent will actively engage in rehabilitative options.

Imposing any discipline less severe than revocation in this circumstance would also wrongly signal others that engaging in similar conduct would not result in a serious consequence, and therefore lack any deterrent to this type of conduct. Revocation will act to safeguard the public and deter such conduct by other practitioners.

COSTS

The imposition of costs against the respondent 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 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 Administrative Law Judge's recommendation and the Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder, like the supreme court's decision whether to assess the full costs of disciplinary proceedings against disciplined attorneys, see Supreme Court Rule 22.24(1m), is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties;
- 4) The respondent's cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licensees, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and
- 7) Any other relevant circumstances.

Under the circumstances of this case, it is reasonable to assess the full costs of this proceeding to the respondent as there are no mitigating factors to take into consideration. The respondent's misconduct was egregious. She stole medication from a resident who needed that drug. She put her patient at risk to satisfy her own need for drugs. The respondent's conduct demonstrated that she was a danger to her patients.

The respondent was uncooperative with the disciplinary process. She failed to participate in scheduled proceedings before the Administrative Law Judge and did not appear for her evidentiary hearing. By failing to participate in the process the respondent admitted to all of the facts in the Complaint. The respondent also demonstrated her lack of respect for the Board and her profession.

Additionally, in a program revenue agency the costs of prosecuting cases for a particular licensed profession are borne by the licensed members of that profession. Most regulatory boards have found that 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. This is particularly compelling when, as in this case, the respondent's actions were flagrant violations of the profession's code of conduct. Fairness dictates the imposition of the costs of disciplining the respondent on the respondent and not on fellow members of the nursing profession who have not engaged in such conduct.

The Department of Regulation and Licensing is directed to send this Decision and Order to the Department of Health Services' Chief Legal Counsel. This case is recommended for review under the Caregiver Law in Wis. Stat., s. 50.065, because of the finding of abuse of a patient.

Dated this _____ day of July, 2008

Respectfully Submitted

Peggy E. Wichmann
Administrative Law Judge