

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :

PROCEEDINGS AGAINST : FINAL DECISION
: AND ORDER
REGINA M. FABIAN, R.N., : Case No. LS0710234NUR
RESPONDENT. :

[DOE Case No. 04NUR352]

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

Ms. Regina M. Fabian
3834 E. Underwood Avenue
Cudahy, WI 53110

Ms. Regina M. Fabian
1816 15th Avenue #4
South Milwaukee, WI 53172

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 November 28, 2007, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by attorney John R. Zwiég. Ms. Fabian did not appear.

Based on the entire record in this case, the Board of Nursing adopts as its final decision in this matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Regina M. Fabian, R.N., (DOB 3/4/63) is licensed by the Wisconsin Board of Nursing as a registered nurse in the State of Wisconsin (License #116332). Her license was first granted May 12, 1994.
2. Ms. Fabian's last address reported to the Department of Regulation and Licensing is 3834 E. Underwood Avenue in Cudahy, Wisconsin. The Division of Enforcement has determined that Ms. Fabian's most recent address is 1816 15th Avenue #4 in South Milwaukee, Wisconsin.
3. From June 30, 2004, until her employment was terminated on November 10, 2004, Ms. Fabian was employed as a registered nurse at Heritage Square Healthcare Centre (facility), a nursing home in Greendale, Wisconsin.
4. On October 19, 2004, when Resident A was discharged from the facility to the hospital, the unit's double locked narcotic box contained two of Resident A's cards of Endocet, a brand of oxycodone which is a narcotic analgesic and Schedule II controlled substance. One of the cards contained five doses and the other card contained 19 doses. The day shift nurse counted the narcotics with the PM shift nurse and instructed her not to have the medication destroyed because Resident A

was expected to return to the facility. The PM shift nurse then counted the narcotics with Ms. Fabian, who was the night shift nurse, and both of Resident A's cards of Endocet were present and placed in the double locked narcotic box.

5. On October 20, 2004, at change of shift, Ms. Fabian counted the narcotics with the day shift nurse. The following was then discovered:
 - a. The day shift nurse questioned Ms. Fabian about the whereabouts of the card and she replied that she did not know where it was.
 - b. The day shift nurse checked the medication room and the return bin but the missing medication was not there.
 - c. Approximately 30 minutes after the medication was discovered missing, Ms. Fabian produced the medication which she falsely said she had found in the return bin in the medication room.
 - d. The card of Endocet with the 19 pills remaining was missing from the double locked narcotic box. Ms. Fabian had taken the drugs for her own use, without the order of a practitioner.

6. Ms. Fabian worked the night shift at the facility on November 8-9, 2004. During the shift, she signed out both Endocet and Vicodin, a brand of hydrocodone which is a narcotic analgesic and a Schedule III controlled substance, to be given to residents as follows:

11/8/04

 - a. (1) Vicodin signed out at 10:00 p.m. for Resident B.
 - b. (1) Vicodin signed out at 10:30 p.m. for Resident C.
 - c. (2) Vicodin signed out at 10:40 p.m. for Resident D.
 - d. (2) Vicodin signed out at 11:10 p.m. for Resident E.

11/9/04

 - e. (2) Endocet signed out at 1:15 a.m. for Resident F.
 - f. (2) Vicodin signed out at 1:15 a.m. for Resident G.
 - g. (2) Vicodin signed out at 3.10 a.m. for Resident H.

7. Ms. Fabian did not give the medications to the residents but instead took the drugs for her own use without the order of a practitioner. At 8:00 a.m. on November 9, 2004, several residents who were alert and oriented said they did not receive their narcotic pain medication from Ms. Fabian during the night shift. On November 10, 2004, facility administrators confronted Ms. Fabian about the narcotics she signed out during her shift on November 8-9, 2004. Ms. Fabian admitted to the diversion and theft of the narcotics and was terminated from her employment.

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. Fabian 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. By obtaining drugs other than in the course of legitimate practice and as otherwise prohibited by law as set as set forth in Findings of Fact paragraphs 3-7, Ms. Fabian has committed misconduct and unprofessional conduct contrary to § N 7.04 (2), Wis. Admin. Code.
4. By diverting and misappropriating the patient's medication for her own use as set forth in Findings of Fact paragraphs 6-7, Ms. Fabian has committed misconduct or unprofessional conduct contrary to § N 7.04(4), § N 7.04(12), Wis. Admin. Code.

5. The conduct described in the Findings of Fact paragraphs 3-7 constitutes an agency finding of abuse, neglect and misappropriation within the meaning of §50.065(4m), Wis. Stats.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the license of Regina M. Fabian 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 Regina M. Fabian, pursuant to § 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. Fabian by regular U.S. mail at her last known address on file with the Wisconsin Department of Regulation and Licensing. In addition, the Notice of Hearing and Complaint were also sent by certified mail to Ms. Fabian at her South Milwaukee address. However, Ms. Fabian did not file an answer to the above-captioned complaint, nor did she appear at the scheduled hearing. As a result, Ms. Fabian is in default and has effectively admitted all of the allegations contained in the complaint, namely that she improperly diverted prescription drugs for her own use while working at the Heritage Square Healthcare Centre in Greendale, Wisconsin, during October and November of 2004. Upon discovering the missing prescription drugs, Ms. Fabian's employer confronted her at which time she reported being in counseling and admitted to the diversion and the theft of narcotics. *See Ex 5*. Thereafter, Ms. Fabian's employer terminated her. *Id.*

Because Ms. Fabian 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. Fabian 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. Fabian 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. Under the circumstances of this matter, it is reasonable to assess the full costs of this proceeding to Ms. Fabian.

EXPLANATION OF VARIANCE

The Board of Nursing accepts the proposed Findings of Fact, Conclusions of Law and Order recommended by the Administrative Law Judge, but determines that it is necessary to incorporate additional legal conclusions as set forth in paragraphs 4 and 5 regarding a finding of abuse, neglect and misappropriation by a state agency within the meaning of § 50.065(4m)(b)3., Wis. Stats. In addition, the Board hereby corrects a clerical error in paragraph 2 of the Conclusions of Law regarding the total number of factual findings, replacing the reference to Findings of Fact 3-8 with the corrected numbering: Findings of Fact 3-7.

The purpose of this variance is to clarify the determination of the Board that the Respondent's actions in diverting the prescriptions drugs of her patients, as described in the findings of fact constituted not only "obtaining any drug other than in the legitimate course of practice" but a misappropriation of the patient's property without their consent as well as conduct of abuse and neglect. The medications that the Respondent diverted from the patients were narcotic analgesics and controlled substances. Instead of giving the medications to the patients to control their pain, the Respondent took the drugs for her own use. By depriving the patients of their pain medications, the Respondent caused a substantial risk to the patients of uncontrolled pain and discomfort because they did not receive any pain medication during her shift. The Respondent's conduct is anathema to the ethics of the nursing profession. Accordingly, the Board wishes to make it clear, should there be any doubt, that this decision constitutes an agency finding of abuse, neglect and misappropriation and that Respondent should therefore be referred to the Wisconsin Department of Health and Family Services (DHFS) for a rehabilitation review pursuant to § 50.065(5), Wis. Stats.

STATE OF WISCONSIN
BOARD OF NURSING

Marilyn Kaufmann, RN, PhD
Chair

2/28/08