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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
JENNIFER S. SCHATZ, R.N.,	:	LS0712142NUR
RESPONDENT.	:	

Division of Enforcement Case Nos. 05NUR273 & 07NUR151

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 22nd day of January, 2009.

Marilyn Kaufmann
Member
Board of Nursing

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :		
PROCEEDINGS AGAINST	:	
	:	PROPOSED DECISION
JENNIFER S. SCHATZ, R.N.	:	AND ORDER
RESPONDENT	:	Case No. LS0712142NUR

[DOE Case Nos. 05NUR273 & 07NUR151]

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

Ms. Jennifer S. Schatz
1008 115th Street
Pleasant Prairie, WI 53158

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 September 8, 2008, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by attorney John R. Zwieg. Ms. Schatz appeared *pro se*.

The record in this matter was held open until October 10, 2008, for the receipt of an additional exhibit and written closing arguments. On September 18, 2008, the additional exhibit, marked as Exhibit #8, was received into the record. Thereafter, Ms. Schatz requested two separate extensions to file her closing arguments. A Posthearing Memorandum and Order was issued on October 8, 2008, extending Ms. Schatz’s filing deadline to October 20, 2008. The filing deadline was again extended by letter dated November 3, 2008, to November 15, 2008. Mr. Zwieg was given until November 21, 2008, to file his reply. Despite the extensions, Ms. Schatz failed to file any closing arguments in this matter.

Therefore, based on the entire record in 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. Jennifer S. Schatz (DOB 10/08/69) is licensed by the Wisconsin Board of Nursing as a registered nurse in the State of Wisconsin pursuant to License #151063, which was first granted on June 24, 2005.
2. Ms. Schatz's last address on file with the Department of Regulation and Licensing is 1008 115th Street in Pleasant Prairie, Wisconsin.
3. Ms. Schatz was employed by United Hospital System (UHS)-St. Catherine's Medical Center as a registered nurse and worked specifically with Leonardo Montemurro, a physician in Pleasant Prairie, Wisconsin.
4. On August 3, 2005, Ms. Schatz falsely represented to personnel at the Good Value Pharmacy in Kenosha that the physician with whom she worked had authorized a prescription for her for 60 units of 80 m.g. of furosemide, a diuretic, and that refills were authorized. Ms. Schatz received 60 units of furosemide that day and obtained refills on August 26 and September 14, 2005. Furosemide is not a controlled substance but requires an order of a practitioner to legally obtain the drug.
5. On August 26, 2005, Ms. Schatz forged the name of Dr. Leonardo Montemurro on a prescription order for which she was named as the patient. The prescription was for 40 tablets of Percocet, a brand of oxycodone and a narcotic analgesic, which is a Schedule II controlled substance. On August 26, 2005, Ms. Schatz presented the prescription at the Good Value Pharmacy in Kenosha and received the oxycodone.
6. On September 12, 2005, Ms. Schatz forged the name of Dr. Leonardo Montemurro on a prescription order for which she was named as the patient. The prescription was for 40 tablets of Percocet. On September 12, 2005, Ms. Schatz presented this prescription at a Walgreen's Pharmacy in Kenosha and received the oxycodone.
7. On September 12, 2005, Ms. Schatz also called in to the same Walgreen's pharmacy in Kenosha a telephone prescription order for herself for methotrexate and falsely represented that it was prescribed by the physician for whom she worked. Methotrexate is not a controlled substance, but the prescription order of a practitioner (which may be by telephone) is required to legally obtain or possess methotrexate.
8. Administrators at UHS, Ms. Schatz's place of employment, became aware of Ms. Schatz's obtaining drugs by forgery and misrepresentation. As part of their investigation they interviewed Ms. Schatz on September 13, 14, and 16, 2005. On the first two dates, Ms. Schatz denied the allegations. On September 16, after being presented with evidence supporting the allegations, Ms. Schatz admitted forging the prescriptions for Percocet and admitted fraudulently calling in the prescription for methotrexate.
9. On September 19, 2005, UHS terminated Ms. Schatz's employment. UHS representatives also called the Good Value Pharmacy in Kenosha and alerted them that any prescriptions for Ms. Schatz purportedly authorized by the physician with whom she had worked were false and should not be filled.
10. On October 10, 2005, Ms. Schatz called the Good Value pharmacy and asked if there were still refills available on the prescription for furosemide, dated August 3, 2005. The pharmacy tech who took the call told her there were refills available and Ms. Schatz asked that it be refilled and said she would be in to pick it up.
11. The pharmacist on duty was aware of the call from Ms. Schatz's former employer. When the pharmacist was alerted on October 10, 2005, to Ms. Schatz's request that the fraudulent prescription be refilled, the pharmacist called the police. Ms. Schatz was arrested when she came to the pharmacy and requested the refill.

CONCLUSIONS OF LAW

1. The Nursing Board has jurisdiction in this matter pursuant to §441.07, Wis. Stats.
2. 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 4-7 and 10, Ms. Schatz has committed misconduct and unprofessional conduct contrary to § N 7.04 (2), Wis. Admin. Code.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that effective the date this Order is signed:

1. The license of Jennifer S. Schatz, R.N., to practice as a registered nurse in the State of Wisconsin is **SUSPENDED** for an indefinite period of no less than two years.
2. The privilege of Ms. Schatz 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 **SUSPENDED** for an indefinite period.
3. Ms. Schatz may seek a stay of the suspension at any time after two years, but any request for a stay shall include:
 - a. A psychological evaluation of Ms. Schatz by a mental health care provider approved by the Board of Nursing or its designee, who shall have first reviewed this Final Decision and Order.
 - b. Evidence of all treatment, monitoring, and rehabilitation that Ms. Schatz has received since September 2005.
4. If the Board believes that Ms. Schatz can practice with safety to patients and the public, the Board of Nursing may grant the stay and impose any limitations on Ms. Schatz's license the Board of Nursing deems necessary to protect the public and rehabilitate Ms. Schatz.
5. Any requests, petitions, reports, payments and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

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

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed upon Ms. Schatz pursuant to sec. 440.22, Wis. Stats.

OPINION

Jennifer S. Schatz was employed by United Hospital System (UHS)-St. Catherine's Medical Center as a registered nurse during the months of August and September 2005. Ms. Schatz worked specifically with Leonardo Montemurro, a physician in Pleasant Prairie, Wisconsin.

On August 3, 2005, Ms. Schatz falsely represented to personnel at the Good Value Pharmacy in Kenosha that the physician with whom she worked had authorized a prescription for her for 60 units of 80 m.g. of furosemide, a diuretic, and that refills were authorized. Ms. Schatz received 60 units of furosemide that day and obtained refills on August 26 and September 14, 2005. *See* Ex. 4 and 5.

Ms. Schatz also forged the name of Dr. Leonardo Montemurro on a prescription order for which she was named as the patient on August 26, 2005. The prescription was for 40 tablets of Percocet, a brand of oxycodone and a narcotic

analgesic, which is a Schedule II controlled substance. On August 26, 2005, Ms. Schatz presented the prescription at the Good Value Pharmacy in Kenosha and received the oxycodone. *See* Ex. 4 and 5.

Next, on September 12, 2005, Ms. Schatz forged the name of Dr. Leonardo Montemurro on a prescription order for which she was named as the patient. The prescription was for 40 tablets of Percocet. That same day, Ms. Schatz presented this prescription at a Walgreen's Pharmacy in Kenosha and received the oxycodone. Again on September 12, 2005, Ms. Schatz also called in to the same Walgreen's pharmacy in Kenosha a telephone prescription order for herself for methotrexate and falsely represented that it was prescribed by the physician for whom she worked. *See* Ex. 1 and 2.

Administrators at UHS, Ms. Schatz's place of employment, became aware of Ms. Schatz's obtaining drugs by forgery and misrepresentation and as part of their investigation, interviewed Ms. Schatz on September 13, 14, and 16, 2005. On the first two dates, Ms. Schatz denied the allegations. On September 16, after being presented with evidence supporting the allegations, Ms. Schatz admitted forging the prescriptions for Percocet and admitted fraudulently calling in the prescription for methotrexate. *See* Ex. 1.

Ms. Schatz's employment at UHS was terminated on September 19, 2005. *See* Ex. 1. Representatives from UHS also called the Good Value Pharmacy in Kenosha and alerted them that any prescriptions for Ms. Schatz purportedly authorized by the physician with whom she had worked were false and should not be filled. On October 10, 2005, Ms. Schatz called the Good Value pharmacy and asked if there were still refills available on the prescription for furosemide. The person who took the call told her there were refills available and Ms. Schatz asked that it be refilled and said she would be in to pick it up. Because the pharmacist on duty was aware of the call from Ms. Schatz's former employer, a call was placed to the police who arrested Ms. Schatz when she came to the pharmacy and requested the refill. *See* Ex. 6.

After initially denying that she had fraudulently obtained various prescriptions, both Chris Lange, the human resources manager at United Hospital System (UHS), and Vickie Lewis, the manager of the clinical practice division at UHS, testified that that Ms. Schatz admitted to them during their third investigatory meeting with her that she had forged the prescriptions in question. In spite of their testimony, Ms. Schatz nevertheless denied her wrongful conduct throughout the hearing. Tr. at 36, 61, and 131. Ms. Schatz was emphatic in stating that she was not an "impaired professional" and "did not do what [she] was alleged to have" done. Tr. at 122 and 131.

Indeed, Ms. Schatz provided several alternate explanations as to how these fraudulent prescriptions may have emerged. Some of her explanations were implied, while others were direct. To begin, Ms. Schatz indicated that she had initially denied the allegations lodged against her by her employer but by the third investigatory meeting, she felt "intimidated, threatened, and coerced" and therefore admitted to the allegations. Tr. at 11. She went on to explain that she is a single parent and had been threatened with an arrest, presumably by her employer, but believes she was ultimately vindicated because, although she was arrested, the charges against her concerning several of the prescriptions in question were eventually dismissed. Tr. at 11 and 132. Furthermore, she points to negative drug screens and the absence of drug testing by her employer as evidence that these fraudulent prescriptions could not have originated with her. Tr. at 11, 42, and 132.

Ms. Schatz also maintained that Dr. Leonardo Montemurro was unethical and a difficult person with whom she had to work. She believed that because she stood up to Dr. Montemurro that he retaliated against her by forging the various prescriptions in question. Tr. at 121. Finally, Ms. Schatz suggests that another reason for the fraudulent prescriptions is due to a former boyfriend of hers, Mr. Molinaro. According to Ms. Schatz, Mr. Molinaro was "not a good guy" and someone who had "extensive knowledge of how the medical system works." Tr. at 119 and 128. As a result, she believed that he may also have been instrumental in forging various prescriptions, including those from Dr. Montemurro as well as from her former employer, Dr. Lotts. She also suggested that Mr. Molinaro may have taken such actions against her as a form of retaliation for her having testified against him in a criminal matter.

Upon closer examination, none of these explanations are plausible. Both Mr. Lange and Ms. Lewis testified that they did not threaten to call the police concerning the incidents involving Ms. Schatz. Tr. at 36 and 59-60. However, Ms. Schatz did ask the two of them whether they would be reporting the matter to the "State" or calling the police. Tr. at 36. They indicated that they intended to report the matter to the State, but had not made a determination as to whether or not to contact the police. *Id.* In fact, there is no indication in the record that either Mr. Lange or Ms. Lewis ever contacted the police or threatened Ms. Schatz in any way.

The fact that Ms. Schatz was not required to undergo immediate drug testing once her employer discovered the forged prescriptions is merely a red herring and, as Mr. Lange pointed out, was not the primary purpose of his inquiry. As he noted, “We weren’t investigating whether Ms. Schatz was actually using the medications. We were investigating *how* she obtained those medications.” Tr. at 42 (emphasis added). In short, the issue at hand was not whether Ms. Schatz was impaired, but, rather, whether she had fraudulently obtained certain prescriptions.

In yet another effort to shift blame away from herself, Ms. Schatz accused Dr. Montemurro of being unethical and difficult. She claims that because she stood up to his behavior, he retaliated against her presumably by accusing her of forging prescriptions in his name. While both Mr. Lange and Ms. Lewis acknowledged having received complaints about Dr. Montemurro’s demeanor, there was no evidence to suggest that he had ever engaged in any unethical conduct. Nor is there any evidence whatsoever as to how Dr. Montemurro could have possibly engineered these incidents involving the forged prescriptions.

Finally, Ms. Schatz implicates her former boyfriend, Mr. Molinaro, as the cause of these fraudulent prescriptions. She suggests that because he is especially well versed in medical practices that he was somehow able to obtain and/or forge these prescriptions. Again, this is an empty charge, aimed at yet another third party in an attempt to divert attention away from Ms. Schatz and onto others. In so doing, she denies any responsibility for her wrongdoing and instead blames other people for it. Ms. Schatz’s numerous attempts to deflect the blame for these incidents from herself to others are unacceptable. She has been consistently unrepentant and shows no signs of having any insight into her wrongdoing.

The question therefore remains as to what the appropriate form of discipline is in light of Ms. Schatz’s actions. A suspension 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).

Throughout these proceedings, Ms. Schatz has denied any wrongdoing and has consistently tried to place the blame for these forged prescriptions on someone other than herself. However, the evidence clearly suggests otherwise. In order to deter other licensees from acting in a similar manner and to prevent any future occurrences of this kind, discipline is indicated. It is not known why Ms. Schatz sought these prescriptions. Without that knowledge and information, it would be exceedingly difficult and nearly impossible to structure a limited license that would not only serve to protect the public, but also rehabilitate Ms. Schatz. A suspension of her license, as recommended, is therefore appropriate.

The imposition of costs against Ms. Schatz has also been 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 Ms. Schatz is a discretionary decision on the part of the Board of Nursing (Board). It further suggests that the Board’s discretion extends to 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 attorneys, 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.

See Supreme Court Rule 22.24 (1m).

Under the circumstances of this case, it is reasonable to assess the full costs of this proceeding to Ms. Schatz. Although Ms. Schatz has never previously been disciplined, the seriousness of her conduct in this case and her failure to accept any responsibility for her role in it warrants the full assessments of costs. All of the counts against Ms. Schatz in this matter were proven and the level of discipline sought was quite severe. 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. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, the more prevalent view has been that the licensee should bear the costs of the proceeding.

Dated at Madison, Wisconsin, this 1st day of December 2008.

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Jacquelynn B. Rothstein
Administrative Law Judge