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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
CHRISTAL L. SCHAUT, L.P.N.,	:	LS0803261NUR
RESPONDENT.	:	

Division of Enforcement Case No. 06 NUR 230

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 June, 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
Case No. LS0803261-NUR**

**CHRISTAL L. SCHAUT, L.P.N.,
RESPONDENT.**

Division of Enforcement Case #06 NUR 230

PARTIES

The parties in this matter under Wis. Stats. § 227.44 and for purposes of review under Wis. Stats. § 227.53 are:

Christal L. Schaut
2516 Northwestern Ave., Apt. 8
Racine, WI 53404

Board of Nursing
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708

This matter was commenced by the filing of a Notice of Hearing and Complaint. Atty. Arthur Thexton appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. The Respondent, Christal L. Schaut, did not file an Answer to the Complaint and did not appear at the hearing held in this matter.

Based upon the record herein, the 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. Christal L. Schaut, L.P.N., (dob 08/29/69), 2516 Northwestern Ave., Apt. 8, Racine, WI 53404, is duly licensed as a Licensed Practical Nurse in the State of Wisconsin. This license (# 32559) was first granted on July 22, 1994.

2. On June 22, 2006, and while employed as a practical nurse at the Brookside Care Center, Racine, WI, Ms. Schaut provided a sample of urine from her body which tested positive for cocaine, methadone, and propoxyphene. Ms. Schaut did not have a prescription or other authorization to have any of these controlled substances in her body.

3. On November 30, 2007 and December 14, 2007, an Investigator with the Department of Regulation and Licensing, Division of Enforcement, made a request to Ms. Schaut for information relating to Ms. Schaut's use of the controlled substances identified in paragraph 2 above. Ms. Schaut did not respond to the Division's request for information.

4. Ms. Schaut did not file an Answer and did not appear at the hearing held in this matter.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to Wis. Stats., § 441.07, and Wis. Admin. Code ch. N 7.
2. Ms. Schaut's conduct, as described in Findings of Fact 2 herein, constitutes a violation of Wis. Admin. Code § N 7.04 (1), (2) and (15).
3. Ms. Schaut's conduct, as described in Findings of Fact 3 herein, constitutes misconduct and unprofessional conduct under Wis. Admin. Code § N 7.04 (intro.).
4. By failing to appear at the hearing held in this matter, Ms. Schaut is in default under Wis. Admin. Code § RL 2.14.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Christal L. Schaut to practice as a Licensed Practical Nurse (#32559) be, and hereby is, **SUSPENDED** for an indefinite period of time.

IT IS FURTHER ORDERED that:

SUPENSION

- A.1. 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 Suspended for an indefinite time.
- A.2. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active nursing for every year the suspension is stayed, the Board may grant a petition by the Respondent under paragraph D. 4. for return of full licensure.
- A.3. The Board may, on its own motion or at the request of the Department Monitor, grant full licensure at any time.

STAY OF SUSPENSION

- B1. The suspension shall be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Respondent is in compliance with the provisions of Sections C and D of this Order.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. Repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Board may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
 - (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, in a drug treatment program at a treatment facility (Treater) acceptable to the Board or its designee. Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation, drug monitoring and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D. 1., below). If Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater, but not less than twice per month for the first year. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as required by D. 4., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported monthly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee.
- C.9. Respondent shall abstain from all use of over-the-counter medications or other substances which may mask consumption of controlled substances, create false positive screening results, or interfere with Respondent's treatment and rehabilitation.
- C.10. Respondent shall report all medications and drugs, over-the-counter or prescription, taken by Respondent to Treater and the Department Monitor within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. If Respondent has not provided a release as required by C. 9 above, within 24 hours of a request by Treater or the Board or its designee, Respondent shall provide releases in compliance with state and federal laws. The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Respondent's treatment with, and provide copies of treatment records to, the requester.

Drug Screens

- C.11. Respondent shall enroll and begin participation in a drug monitoring program which is approved by the Department pursuant to Wis. Adm. Code § RL 7.11 ("Approved Program"). A list of Approved Programs is available from the Department Monitor.
- C.12. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b.) Production of a urine specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.13. The Approved Program shall require the testing of urine specimens at a frequency of not less than 56 times per year, for the first year of this Order. After the first year, the frequency may be reduced only upon a determination by the Board or its designee after receiving a petition for modification as required by D. 4., below.
- C.14. The Department Monitor, Board or Board designee shall determine the tests to be performed upon the specimens. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances, Respondent shall promptly submit to additional tests or examinations as the Treater or the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.15. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional urine specimens, (b) submit blood, hair or breath specimens, (c) furnish any specimen in a directly witnessed manner.
- C.16. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.
- C.17. The Approved Program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11.

Practice Limitations

- C.18. Respondent shall not work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances.
- C.19. Respondent shall practice only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee and only in a work setting pre-approved by the Board or its designee. Respondent may not work in a home health care, hospice, pool nursing, or agency setting.
- C.20. Respondent shall provide a copy of this Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a nurse or care giver or provides health care, currently or in the future.
- C.21. It is Respondent's responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active nursing practice worked during that quarter.
- C.22. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports 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 Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817
department.monitor@drl.state.wi.us

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent. Additionally, every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by Board

- D.3. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.4. Respondent may petition the Board for modification of the terms of this Order or termination, however no such petition for modification shall occur earlier than one year from the date of this Order. Any such petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

Costs of Compliance

- D.5. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

IT IS FURTHER ORDERED that pursuant to s. 440.22 Wis. Stats., the cost of this proceeding shall be assessed against Respondent.

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

OPINION

I. Procedural History

This matter was commenced by the filing of a Notice of Hearing and Complaint. Atty. Arthur Thexton appeared on behalf of the Division of Enforcement. The Respondent, Christal L. Schaut, did not file an Answer to the Complaint and did not appear at the hearing held in this matter.

II. Applicable Laws

A. Board of Nursing

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:

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. A certified copy of a judgment of conviction is prima facie evidence of a violation;

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

(15) Violating any rule of the board.

B. Procedural Law

RL 2.14 Default. If the respondent fails to answer as required by s. RL 2.09 or fails 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.

III. Default

Ms. Schaut, by failing to file an Answer to the Complaint and by failing to appear at the hearing held in this matter is in default under Wis. Admin. Code § RL 2.14.

Wis. Admin. Code § RL 2.14, states, in part, that if the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed, 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.

IV Evidence Presented

The Division of Enforcement alleges in its Complaint that Ms. Schaut, by engaging in the conduct described therein, violated laws relating to the practice of practical nursing. The evidence presented establishes that the violations occurred.

On June 22, 2006, and while employed as a practical nurse at the Brookside Care Center, Racine, Wisconsin, Ms. Schaut provided a sample of urine from her body which tested positive for cocaine, methadone, and propoxyphene. Ms. Schaut did not have a prescription or other authorization to have any of these controlled substances in her body.

In addition, on November 30, 2007 and December 14, 2007, an Investigator with the Department of Regulation and Licensing, Division of Enforcement, made a request to Ms. Schaut for information relating to Ms. Schaut's use of the controlled substances. Ms. Schaut did not respond to the Division's request for information.

Testimony of Richard J. Goldberg, M.D.

Dr. Goldberg testified at the request of the Division of Enforcement. He has been licensed as a physician in the state of Wisconsin since 1997. He has a Master of Public Health in Occupational Medicine and is Board Certified in Emergency Medicine. He has been certified as a Medical Review Officer to review employment-related drug screens for at least 10 years and now serves in that capacity at United Occupational Medicine in Kenosha, Wisconsin. In his capacity as the Medical Review Officer at United Occupational Medicine, Dr. Goldberg was asked to review Ms. Schaut's urine drug test. According to Dr. Goldberg, Ms. Schaut's drug test results showed three positives, which included cocaine metabolites, methadone, and Propoxyphene. Dr. Goldberg said that the results mean that these specific substances were found in the urine of the specimen that was provided by Ms. Schaut. After Dr. Goldberg contacted Ms. Schaut, he determined that there were no legitimate medical explanations for her positive test results. Transcript pages 9-17; Exhibits 1 and 2.

Testimony of Karen Fahlgren

Ms. Fahlgren was a Consumer Protection Investigator with the Department of Regulation and Licensing for approximately 16 years before she retired in 2008. Ms. Fahlgren sent a letter to Ms. Schaut, dated November 30, 2007, in which she asked Mr. Schaut to call her before December 7, 2007 so that she could follow-up on the complaint filed against Ms. Schaut by Brookside Care Center with the Board of Nursing. Investigator Fahlgren attached a copy of Ms. Schaut's drug screen results and a copy of the memo that she prepared relating to the August 4, 2006 telephone contact that she had with Ms. Schaut to the letter. Ms. Schaut did not respond to the November 30th letter. Investigator Fahlgren sent a follow-up letter to Ms. Schaut, dated December 14, 2007, in which she asked Ms. Schaut to contact her by January 3, 2008 regarding the same matter. Investigator Fahlgren again attached the same documents to the letter that were attached to the November 30th letter. Ms. Schaut did not respond to the December 14th letter. Transcript, p. 18-27; Exhibits 3 and 4.

V. Appropriate Discipline

Having found that Ms. Schaut violated statutes and rules relating to the practice of practical nursing, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Board of Nursing is authorized under Wis. Stat. § 441.07 (1), to revoke, limit, suspend or deny renewal of a license of a registered nurse or a licensed practical nurse, or reprimand a registered nurse or licensed practical nurse, if the board finds that the person has engaged in misconduct or unprofessional conduct.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1969).

The Division of Enforcement recommends that Ms. Schaut's license to practice as a practical nurse be suspended for an indefinite period of time, and that she be permitted to resume practice; provided, that she comply with certain conditions and limitations.

The Administrative Law Judge also recommends that Ms. Schaut's license to practice as a practical nurse be

suspended for an indefinite period of time, and that she be permitted to resume practice subject to compliance with certain conditions and limitations. This measure is designed primarily to assure protection of the public. Ms. Schaut is not capable of practicing nursing in a manner that safeguards the interest of the public. Any measure short of suspension of her license would not provide adequate protection to the public. Ms. Schaut is free to petition the Board for a stay of the suspension of her license upon a showing that she is capable of practicing nursing in a manner that safeguards the interest of the public.

VI. Costs of the Proceeding

Wis. Stat. § 440.22 (2) provides in relevant part:

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, a portion of the costs or no costs.

The Administrative Law Judge’s recommendation and the Board of Nursing’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) Any other relevant circumstances.

Under the circumstances of this case, it is reasonable to assess the full costs of this proceeding to Ms. Schaut.

First, the Division established by a preponderance of the evidence that the violations alleged in its Complaint occurred.

Second, although Ms. Schaut has no record of prior discipline, the violations established were serious with potential to cause great harm. The recommendation for suspension of her license is reflective of the serious nature of the unprofessional conduct that has been established by the evidence.

Third, Ms. Schaut failed to cooperate in reference to the disciplinary process. She failed to file an Answer to the Complaint and she failed to appear at the hearing held in this matter.

VII. Recommendations

Based upon the record herein, the Administrative Law Judge recommends that the Board of Nursing adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 7th day of May 2009.

Respectfully submitted,

Ruby Jefferson-Moore
Administrative Law Judge