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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST : FINAL DECISION
: AND ORDER
TERRENCE J. OSMANSKI, R.N., : LS0807161NUR
RESPONDENT. :

Division of Enforcement Case No. 07 NUR 285

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 7th day of May, 2009.

Marilyn Kaufmann
Member
Board of Nursing

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

:
IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
TERRENCE J. OSMANSKI, R.N., :
RESPONDENT. :
:

**PROPOSED DECISION
AND ORDER**

Case No. LS-0807161-NUR
:

Division of Enforcement Case Number 07 NUR 285

PARTIES

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

Complainant:

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

Respondent:

Terrence J. Osmanski
1111 South 6th Avenue
Wausau, WI 5 4401

Disciplinary Authority:

Wisconsin Board of Nursing
Department of Regulation and Licensing
1400 East Washington Ave.
Madison, WI 53703

PROCEDURAL HISTORY

A. The Complaint in this matter was filed on July 16, 2008. A Notice of Hearing was sent to the Respondent, Terrence J. Osmanski. The Notice of Hearing informed Mr. Osmanski that "If you do not appear for hearing at the time and location set forth above, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

B. Mr. Osmanski filed an Answer on August 15, 2008.

C. A prehearing conference was held by phone on February 9, 2009.

D. A Motion to Amend Complaint and Amended Complaint in this matter were filed on February 10, 2009.

E. A prehearing conference was held by phone on February 23, 2009. A hearing was set for March 18, 2009 and Mr. Osmanski was directed to file an Answer to the Amended Complaint by February 27, 2009.

F. Mr. Osmanski did not file an answer to the Amended Complaint.

G. The hearing in this matter was held as scheduled on March 18, 2009. On March 17, 2009, Mr. Osmanski left a voicemail message for the Administrative Law Judge stating that he had decided not to attend the hearing, and he did not appear.

FINDINGS OF FACT

1. Terrence J. Osmanski, (DOB 05/16/1966) is licensed as a registered nurse in the state of Wisconsin (license #30-125907). This license was first granted on June 9, 1997. Renewal was denied due to a tax delinquency on September 22, 2008, and the license is currently in inactive or unexpired status. This status would allow Mr. Osmanski to renew his license following satisfaction of the tax delinquency.

2. Respondent's most recent address on file with the Wisconsin Board of Nursing is 1111 S. 6th Avenue, Wausau, Wisconsin, 54401.

3. Respondent was an employee of St. Joseph's Hospital – Ministry Care in Marshfield, Wisconsin, from approximately October of 1999, until approximately June 27, 2007. He then transferred to St. Clare's Hospital in Weston, Wisconsin.

4. On or about July 30, 2007, St. Clare's received a telephone tip that Respondent was diverting narcotics. They audited Respondent's Pyxis withdrawals, and noticed irregularities.

5. St. Clare's Hospital inquired of St. Joseph's Hospital if they had noticed any similar irregularities. St. Joseph's Hospital did a Pyxis audit of a three-month period. Five irregularities involving Hydromorphone were discovered.

6. Further investigation showed that Respondent had the following convictions:
- 1988: Possession (of THC), in violation of Wis. Stat. § 161.41
 - 1991: Operating while intoxicated, in violation of Wis. Stat. § 346.63
 - 1993: Disorderly conduct, in violation of Wis. Stat. § 947.01
 - 1994: Possession of drug paraphernalia, in violation of Wis. Stat. §161.573(1).
 - 2002: Possession of THC, in violation of Wis. Stat. § 961.41(3g)(e)
 - 2002: Operating while intoxicated, in violation of Wis. Stat. §346.63(1)(a)
 - 2006: Operating with a controlled substance, in violation of Wis. Stat. §346.63(1)(am).

7. Respondent was terminated from St. Clare's Hospital on or about August 2, 2007, when it was discovered that he had falsified his employment application. When asked if he had ever been convicted of a crime or whether he had any criminal charges pending against him, he had listed only

- a 2002 Operating While Intoxicated charge,
- a 1993 Disorderly Conduct charge, and
- a 1992 Disorderly conduct charge.

He did not list the 1988 possession of THC charge, the 1991 operating while intoxicated charge, the 1994 possession of drug paraphernalia charge, the 2002 possession of THC charge, or the 2006 operating with a controlled substance charge.

8. During this investigation, Respondent was asked to list his criminal convictions. He listed only the following:
- 1988: Possession of THC
 - 1992: Disorderly conduct
 - 1992: Disorderly conduct
 - 1994: Possession of drug paraphernalia
 - 1994: Bail jumping via a no contact order
 - 2002: Operating while intoxicated and possession of THC.

He did not list the 1991 operating while intoxicated charge or the 2006 operating with a controlled substance charge.

9. Following the date he received his license, Mr. Osmanski did not report his convictions to the Department.

10. Although renewal of Respondent's license to practice nursing in Wisconsin was denied due to a tax

delinquency on September 22, 2008, Respondent continued to work as a registered nurse at Wausau Surgery Center until he was laid off on January 30, 2009.

11. Mr. Osmanski was served, under the requirements of sec. RL 2.08 (1), Wis. Admin. Code, with the Amended Complaint in this matter on February 10, 2009.

12. Mr. Osmanski did not file an Answer to the Amended Complaint as required by the ALJ's order of February 23, 2009, and as explained in the Notice of Hearing, nor did he appear for the hearing in this matter.

13. Section N 7.04, Wis. Admin. Code, defines as "misconduct or unprofessional conduct" as 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.

14. Section N 7.04 (1), Wis. Admin. Code, defines as misconduct or unprofessional conduct the violation of any law substantially related to the practice of professional or practical nursing.

15. Section N 7.04 (2), Wis. Admin. Code, defines as misconduct or unprofessional conduct the administering, supplying or obtaining any drug other than in the course of legitimate practice.

16. Section RL 4.09, Wis. Admin. Code, requires license-holders to notify the Department of any conviction within 48 hours.

17. Section 441.06 (4), Stats., prohibits practice as a registered nurse without a license.

CONCLUSIONS OF LAW

I. The Board of Nursing is the legal authority responsible for issuing and controlling licenses for Registered Nurses, under chapter 441, Stats., and it has subject-matter jurisdiction over this hearing regarding a disciplinary complaint against a license-holder under section 441.07, Stats.

II. The Board of Nursing has personal jurisdiction over the respondent, Terrence J. Osmanski, based on his holding a license issued by the Board, and based on notice under sec. 801.04 (2), Stats., and sec. RL 2.08, Wis. Admin. Code.

III. Service of the Complaint and Notice of Hearing on Mr. Osmanski was sufficient under sec. 440.11 (2), Stats., and sec. RL 2.08, Wis. Admin. Code.

IV. By failing to file an Answer to the Amended Complaint in this matter within 20 days of service, and by failing to appear for the hearing in this matter, Mr. Osmanski is in default as defined by sec. RL 2.14, Wis. Admin. Code.

V. The conduct described in paragraphs 4 and 5 above constitutes a violation of Wisconsin Administrative Code sec. N 7.04 (2), Wis. Admin. Code, and subjects Respondent to discipline pursuant to sec. 441.07(1)(d), Stats.

VI. The conduct described in paragraph 6 above constitutes a violation of sec. N 7.04 (1), Wis. Admin. Code, and subjects Respondent to discipline pursuant to sec. 441.07(1)(d), Stats.

VII. The conduct described in paragraphs 7 and 8 above constitutes a violation of sec. N 7.04, Wis. Admin. Code, and subjects Respondent to discipline pursuant to sec. 441.07(1)(d), Stats.

VIII. The conduct described in paragraph 9 above constitutes a violation of secs. RL 4.09 and N 7.04, Wis. Admin. Code, and subjects Respondent to discipline pursuant to sec. 441.07(1)(d), Stats.

IX. The conduct described in paragraph 10 above constitutes a violation of sec. 441.06(4), Stats.

ORDER

IT IS HEREBY ORDERED that the license to practice as a Registered Nurse in the State of Wisconsin granted to the Respondent, Terrence J. Osmanski, is hereby REVOKED.

IT IS FURTHER ORDERED that the Respondent, Terrence J. Osmanski, pay the full costs of the Department's investigation and prosecution of this matter. Payment shall be made by certified check or money order and sent to:

Department Monitor

Department of Regulation and Licensing,

PO Box 8935, Madison, WI 53708-8935.

Fax (608) 266-2264

Tel. (608) 267-3817.

ANALYSIS

This is a class 2 proceeding under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Department's Division of Enforcement filed a Complaint alleging professional misconduct by Mr. Osmanski. The Notice of Hearing stated that he could be found to be in default if he did not respond to the complaint by filing an Answer or appear at the hearing.

Mr. Osmanski filed an Answer to the Complaint, but he did not file an Answer to the Amended Complaint, and he did not appear at the hearing. The Administrative Rules contain provisions to permit the Board of Nursing and other credentialing authorities to act to protect the public even in the face of a respondent's non-response. Service is considered legally adequate if mailed to the last-known address, and when a person fails to file an answer or to appear at a hearing, the person may be found to be "in default" and the Board "may make findings and enter an order on the basis of the complaint and other evidence." This is similar to the standard in civil court cases in which allegations in a complaint that are not denied are deemed admitted, sec. 802.02 (4), Stats., and "if no issue of law or fact has been joined" a default judgment may be entered, sec. 806.02 (1), Stats.

The default rule contains a safeguard that is especially important in a case like this where the respondent has presented neither his side of the case nor any facts or circumstances to be considered in his defense. The rule says, "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." There is no definition of what constitutes "a reasonable time", but if Mr. Osmanski contacts the Board at any time with an explanation for her non-responsiveness, the Board should review and consider his communication. The Board will then have the option of re-opening this matter and allowing Mr. Osmanski to defend himself against the Complaint. And after considering all the evidence presented, the Board would have the option of revising its order.

Based on all the procedural steps explained above, the allegations in the Complaint are deemed proven. Mr. Osmanski is found to have diverted drugs, failed to report convictions to an employer, failed to report convictions to the Department, and practiced without a license.

Discipline is appropriate. Mr. Osmanski was offered stipulated outcomes short of revocation, and he did communicate at times with the attorney for the Division of Enforcement and the Administrative Law Judge but his failure in the end to appear at the hearing and either contest or explain the charges which included serious allegations of diversion of drugs make revocation the most appropriate discipline.

Under sec. 440.22, Stats., when discipline is imposed on a credential-holder, the Department has the authority to impose all or part of the costs of a proceeding on the credential-holder. The Board is directed to exercise discretion in its imposition of costs by considering certain factors, including the number of counts charged, contested, and proven; the nature of the

misconduct; the level of discipline; the respondent's cooperation with the disciplinary process; prior discipline; and other relevant circumstances. In this case, the misconduct is serious, the level of discipline is relatively high, and the respondent cooperated with the disciplinary process only up to a point. The record contains no ameliorating circumstances. Given this balance of positive and negative factors, the proposed order includes a provision that Mr. Osmanski pay the Department's full costs of investigating and prosecuting this matter.

APPLICABLE STATUTES AND RULES

Statutes

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:

...
(d) Misconduct or unprofessional conduct.

441.06 Licensure: civil liability exemptions.

...
(4) Except as provided in s. 250.042 (4) (b), no person may practice or attempt to practice professional nursing, nor use the title, letters, or anything else to indicate that he or she is a registered or professional nurse unless he or she is licensed under this section. Except as provided in s. 250.042 (4) (b), no person not so licensed may use in connection with his or her nursing employment or vocation any title or anything else to indicate that he or she is a trained, certified or graduate nurse. This subsection does not apply to any person who is licensed to practice nursing by a jurisdiction, other than this state, that has adopted the nurse licensure compact under s. 441.50.

440.22 Assessment of costs.

...
(2) 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.

Wisconsin Administrative Code

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;

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.

(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 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.

RL 4.09 Credential holder charges or convictions.

...

(2) A holder of any of the credentials set forth in s. RL 4.07 who is convicted of a felony or misdemeanor in this state or elsewhere shall notify the department in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction. Notice shall be made by mail and shall be proven by showing proof of the date of mailing the notice. Notice shall include a copy of the judgment of conviction and a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction in order that the department may determine whether the circumstances of the crime of which the credential holder was convicted are substantially related to the practice of the credential holder.

...

Dated and signed: March 23, 2009

Nick Schweitzer
Administrative Law Judge
Department of Regulation and Licensing