

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
CAROL A. GARBER-HINTZE, R.N.,	:	LS0902171NUR
RESPONDENT.	:	

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Division of Enforcement Case No. 08 NUR 358

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

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST  
CAROL A. GARBER-HINTZE, R.N.,  
RESPONDENT.

:  
:  
:           **PROPOSED DECISION**  
:           **AND ORDER**  
:           Case No. LS-0902171-NUR  
:

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Division of Enforcement Case Number 08 NUR 358

**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:  
Carol A. Garber-Hintze, R.N.  
14085 W. North Oak Blvd.  
New Berlin, WI 53151

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 February 17, 2009. A Notice of Hearing was sent to the Respondent, Carol A. Garber-Hintze, at her address of record with the Department, 14085 W. North Oak Blvd., New Berlin, WI 53151, informing her that a hearing on the Complaint was scheduled for March 18, 2009. The Notice of Hearing also informed Ms. Garber-Hintze that she was required to file an Answer to the Complaint within 20 days, failing which “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 Department 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. No Answer was filed by Ms. Garber-Hintze.
- C. The hearing in this matter was held as scheduled on March 18, 2009. Ms. Garber-Hintze did not appear.

**FINDINGS OF FACT**

1. Carol A. Garber-Hintze, R.N., Respondent, date of birth December 28, 1957, is licensed by the Wisconsin Board of Nursing as a Registered Nurse in the state of Wisconsin pursuant to license number 78411, which was first granted April 2, 1981.

2. Ms. Garber-Hintze's last address reported to the Department of Regulation and Licensing is 14085 W. North Oak Boulevard, New Berlin, WI 53151.

3. During 2008, Ms. Garber-Hintze was employed as a registered nurse (RN) on a medical/telemetry unit by Aurora St. Luke's Medical Center (ASLMC) in Milwaukee.

4. During September 2008, a patient on Ms. Garber-Hintze's unit complained she had not received her pain medication at the time of her discharge. Ms. Garber-Hintze had withdrawn the medication from the AcuDose security medication cart. As a result, an audit of controlled substance transactions completed by Ms. Garber-Hintze was conducted for the period of June 1, 2008 through September 16, 2008, which revealed:

a. There was no documentation that 93 of the 113 doses of hydrocodone Ms. Garber-Hintze had withdrawn had been administered to the patient. Hydrocodone is a Schedule III controlled substance.

b. There was no documentation that 66 of the 82 doses of oxycodone products Ms. Garber-Hintze had withdrawn had been administered to the patient. Oxycodone is a Schedule II controlled substance.

5. During an interview with ASLMC administrators on September 24, 2008, Ms. Garber-Hintze admitted to diverting controlled substances for her personal use without the order of a practitioner. She contended that she had diverted up to two Vicodin tablets per shift for approximately eight months and that she did so to control pain she had as a result of ankylosing spondylitis, a chronic inflammatory disease. Ms. Garber-Hintze's employment was terminated on September 26, 2008.

6. The Division of Enforcement sent letters to Ms. Garber-Hintze (regular mail on November 11, 2008; certified mail on December 10, 2008 and signed for by Ms. Garber-Hintze on December 12, 2008; and regular mail on January 21, 2009) asking her to respond to these allegations. She has not responded to any of those inquiries.

7. Ms. Garber-Hintze was served, under the requirements of sec. RL 2.08 (1), Wis. Admin. Code, with the Complaint and Notice of Hearing in this matter on February 17, 2009.

8. Ms. Garber-Hintze did not file an Answer to the Complaint within 20 days of service as required by sec. RL 2.09, Wis. Admin. Code, and as explained in the Notice of Hearing, nor did she appear for the hearing in this matter.

9. 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.

## **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, Carol A. Garber-Hintze, based on her 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 Ms. Garber-Hintze 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 Complaint in this matter within 20 days of service, and by failing to appear for the hearing in this matter, Carol A. Garber-Hintze is in default as defined by sec. RL 2.14, Wis. Admin. Code.

V. Ms. Garber-Hintze's conduct described in paragraphs 4 and 5 above constitutes a violation of sec. N 7.04 (2), Wis. Admin. Code and subjects her to discipline pursuant to sec. 441.07 (1) (d), Stats.

## ORDER

IT IS HEREBY ORDERED that the license to practice as a Registered Nurse in the State of Wisconsin granted to the Respondent, Carol A. Garber-Hintze, is hereby REVOKED.

IT IS FURTHER ORDERED that the Respondent, Carol A. Garber-Hintze, 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 Ms. Garber-Hintze. The Notice of Hearing stated that she could be found to be in default if she did not respond to the complaint by filing an Answer.

Even though Ms. Garber-Hintze did not respond to the Complaint, 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, or even disappearance. 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 Ms. Garber-Hintze contacts the Board at any time with an explanation for her non-responsiveness, the Board should review and consider her communication. The Board will then have the option of re-opening this matter and allowing Ms. Garber-Hintze to defend herself 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. Ms. Garber-Hintze is found to have diverted controlled substances from her employment for her personal use or, in the language of the rule, to have obtained drugs other than in the course of legitimate practice. Discipline is appropriate. Ms. Garber-Hintze's silence in a matter involving serious allegations of diversion of controlled substances 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 did not cooperate with the disciplinary process (albeit through a total absence of communication). The record contains no ameliorating circumstances. Given this balance of positive and negative factors, the proposed order includes a provision that Ms. Garber-Hintze 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.

...

#### 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:

...

(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.

Dated and signed: March 23, 2009

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Nick Schweitzer  
Administrative Law Judge  
Department of Regulation and Licensing