

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
CHERYL L. HUTCHINS, L.P.N.,	:	<u>LS 0909041 NUR</u>
RESPONDENT.	:	

[Division of Enforcement Case # 08 NUR 314 and 09 NUR 257]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Cheryl L. Hutchins, L.P.N.
4681 N. Parkway Avenue
Milwaukee, WI 53209

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Board of Nursing
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

This disciplinary proceeding was commenced by the filing and service of a Complaint and Notice of Hearing on September 4, 2009. The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board of Nursing. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Cheryl L. Hutchins, L.P.N., Respondent, date of birth August 28, 1959, is licensed by the Wisconsin Board of Nursing as a licensed practical nurse in the state of Wisconsin pursuant to license number 34743, which was first granted June 29, 1998.

2. Respondent's last address reported to the Department of Regulation and Licensing is 4681 N. Parkway Avenue, Milwaukee, WI 53209. The Division has received information that sometime between November 11, 2008 and the present Respondent reported to an employer that she moved from that address to 6938 N. 78th Court, Milwaukee, WI 53223. The Division believes that to be her actual present address.

COUNT I

3. Respondent was employed as a licensed practical nurse by Seasons Hospice & Palliative Care of Wisconsin, Inc. (Seasons), in Milwaukee, Wisconsin. In that employment, Respondent provided home care nursing services to Ms. A at her home in Milwaukee.

4. On August 9, 2008, Respondent was to provide nursing services at Ms. A's home beginning at 8:00 p.m.

a. Respondent arrived for work 45 minutes late and her breath smelled of alcohol. While there, Respondent was quiet for some periods of time and then would be loud and giddy.

b. At approximately 10:00 p.m., Ms. A's sister, who is a nurse, observed Respondent trying to get Ms. A to change into her day clothes. When the sister asked Respondent what she was doing, Respondent groggily replied that Ms. A wanted to change her clothes. Ms. A denied wanting to change clothes.

c. Later, the sister found Respondent asleep and had great difficulty awakening Respondent. After she was awakened, Respondent remained groggy. About 12:45 a.m., the sister asked Respondent to leave because the sister was providing most of the care to Ms. A. Before Respondent arrived, the sister had counted Ms. A's morphine, which is an opiate and a schedule II controlled substance. After Respondent left, the sister counted the morphine again and discovered that three tablets of Ms. A's morphine were missing.

5. On August 10, 2008, the sister notified Seasons of Respondent's behavior and of the missing morphine. At the request of Seasons, Respondent submitted a urine specimen for drug screening on August 10 and the results were positive for opiates. Respondent did not have a practitioner's order for any opiate. Seasons terminated Respondent's employment.

COUNT II

6. On July 22, 2009, Respondent was working as an LPN at Vitas Innovative Hospice Care in Wauwatosa, Wisconsin. The RN on duty placed a patient's evening dose of a 30 mg instant release tablet of morphine in a paper cup and left it in his room. Respondent came into the patient's room to give him fresh water. While there, she took the paper cup and the morphine and began leaving the room. The patient called out that she had his medication and she answered that she did not and left the room.

7. The incident was reported to the RN team manager and an investigation was begun. The team manager offered Respondent the opportunity to have a urine drug screen done to clear things up. After conferring with her son, Respondent agreed to provide urine for a drug screen. The test was performed and was positive for morphine. Upon receiving the test results on August 4, 2009, the employer terminated Respondent's employment.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and authority to enter into this stipulated resolution pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by obtaining a drug other than in the course of legitimate practice and as otherwise prohibited by law, as set out above, has committed misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(2) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

ORDER

1. The SURRENDER by Cheryl L. Hutchins, L.P.N., of her license as a practical nurse in the state of Wisconsin is hereby ACCEPTED.

2. If Respondent ever makes application to the Board for any license:

a. Whether to grant a license and whether to impose any limitations or restrictions on any license that may be granted shall be in the discretion of the Board.

b. Respondent shall, prior to becoming licensed, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$1,380.00 pursuant to Wis. Stat. § 440.22(2).

3. Payment of costs shall be mailed or delivered to:

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

Fax: (608) 266-2264

4. This Order is effective on the date of its signing.

Wisconsin Board of Nursing

By: Marilyn Kaufmann
A Member of the Board

10/1/09
Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	
CHERYL L. HUTCHINS, L.P.N.,	:	STIPULATION
RESPONDENT.	:	<u>LS 0909041 NUR</u>
	:	

[Division of Enforcement Case # 08 NUR 314 & 09 NUR 257]

It is hereby stipulated and agreed, by and between Cheryl L. Hutchins, L.P.N., Respondent; and John R. Zwieg, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary proceeding against Respondent's licensure by the Division of Enforcement. Respondent consents to the resolution of this matter by stipulation and without a hearing.

2. Respondent understands that by signing this Stipulation, she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. Attached to this Stipulation are Respondent's current wall and wallet registration certificates. If the Board does not accept this Stipulation, Respondent's certificates shall be returned to Respondent with a notice of the Board's decision not to accept the Stipulation.

7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or her attorney, if any, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

8. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

9. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Cheryl L. Hutchins, L.P.N.
Respondent
6938 N. 78th Court
Milwaukee, WI 53223

Date

John R. Zwieg
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date