

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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Before The  
State Of Wisconsin  
BOARD OF NURSING

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In the Matter of the Disciplinary Proceedings  
Against **JENNIFER L. SCHLORF, R.N.**,  
Respondent

FINAL DECISION AND ORDER  
Case No. LS 0904033 NUR

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Division of Enforcement Case No. 08 NUR 054

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, make 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 at Madison, Wisconsin on 1/28/10.

Marilyn Kaufmann

Member

Board of Nursing



Before The  
State Of Wisconsin  
**DIVISION OF HEARINGS AND APPEALS**

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In the Matter of the Disciplinary Proceedings  
Against **JENNIFER L. SCHLORF, R.N.**,  
Respondent

PROPOSED DECISION AND ORDER  
Case No. LS 0904033 NUR

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Division of Enforcement Case No. 08 NUR 054

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Jennifer Schlorf  
N231 Eastowne Lane  
Appleton, WI 54915

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

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

**PROCEDURAL HISTORY**

The Complaint in this matter was filed on April 3, 2009. On the same date, the Complaint and a Notice of Hearing were sent to the Jennifer L. Schlorf (the "Respondent") by certified mail at her address of record with the Department of Regulation and Licensing ("Department"), which was N231 Eastowne Lane, Appleton, Wisconsin 54915. The Notice of Hearing stated that the Respondent was required to file a written 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 Wisconsin Board of Nursing 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."

Records of the United States Postal Service indicate that the Notice of Hearing and the Complaint were delivered on April 11, 2009. No Answer has filed by or on behalf Ms. Schlorf.

On August 28, 2009, the undersigned Administrative Law Judge (ALJ) of the Division of Hearings and Appeals issued a Notice of Telephone Prehearing Conference that set a telephone conference with the Respondent and Attorney Sandra Nowack of the Division of Enforcement

for September 10, 2009. The Respondent did not respond to the notice by providing a telephone number at which she could be contacted for the telephone conference. The telephone conference was thus conducted on September 10, 2009 without the Respondent's participation, and during the telephone conference Attorney Nowack expressed the intention to file a motion for default pursuant to Wis. Admin. Code § RL 2.14.

On September 14, 2009, at 9:41 a.m., a person who identified herself as the Respondent left a voice message for the undersigned ALJ in which she stated that she had not received the notice of the telephone conference before the time of the conference on September 10, 2009 because she had not been at her residence to receive mail until after that date. In the voice message she asked the undersigned ALJ to return her telephone call to the number 920-470-1788. The undersigned ALJ responded to the voice message by telephoning the number provided at 11:50 a.m. on the same day. There was no answer at the time but the undersigned left a voice message acknowledging receipt of the voice message of earlier in the day and asking the Respondent to call back. The Respondent did not thereafter contact the undersigned ALJ in any manner.

On September 15, 2009, the Division of Enforcement (Division) filed a Notice of Motion and Motion for Default, which was also served on the Respondent at her last known address.

On September 21, 2009, the undersigned ALJ issued a Notice of Hearing on Default Motion, wherein a hearing on the motion for default was scheduled for October 22, 2009 at the offices of the Department in Madison. The Notice was mailed on September 21, 2009 to the Respondent by regular mail at her address of record with the Department. The Notice was not returned by the USPS as undeliverable or otherwise. The Notice informed Ms. Schlorf that she could attend the hearing on October 22, 2009 in person or by telephone, and that if she chose to attend by telephone, she was instructed to provide the undersigned ALJ with the telephone number at which she could be reached for the motion hearing.

The hearing was held as scheduled on October 22, 2009. Ms. Schlorf did not appear at the hearing or otherwise respond to the motion for default or the notice of hearing on the motion for default.

#### **FINDINGS OF FACT**

1. Jennifer L. Schlorf, R.N., (the "Respondent"), date of birth October 8, 1978, is licensed by the Wisconsin Board of Nursing as a registered nurse in the State of Wisconsin pursuant to license number 132871, which was first granted August 6, 1999.

2. The Respondent's address of record with the Department of Regulation and Licensing is N231 Eastowne Lane, Appleton, WI 54915.

3. On all dates relevant to this matter, the Respondent was employed as a registered nurse at St. Elizabeth Hospital in Appleton, Wisconsin.

4. Between August and September 2007, while working as a registered nurse, the Respondent took morphine and hydromorphone without a prescription as follows:

a. On August 6, 2007, the Respondent removed two 2 mg morphine syringes from a Pyxis MedStation without a physician order. The patient was charged for these syringes and 4 mg was wasted with a witness.

b. On August 17, 2007, the Respondent removed a 2 mg hydromorphone syringe from a Pyxis MedStation without a physician order. The patient was charged and 2 mg was wasted with a witness.

c. On August 9, 2007, the Respondent's verbal order for morphine was not signed by a physician. No documentation of patient harm was found.

d. On September 1, 2007, one mg hydromorphone was documented as given to a patient with no physician order. No documentation of patient harm was found.

e. On September 2, 2007, 12 mg morphine was documented as given on two occurrences when the physician ordered 8 mg. No documentation of patient harm was found.

f. On September 3, 2007, 0.5 mg hydromorphone was documented as given to a patient with no physician order. No documentation of patient harm was found.

g. Between August 9 and September 4, 2007, there were nine syringes of morphine removed from the Pyxis MedStation by the Respondent that did not have proper documentation of 38 mg of waste, two syringes of hydromorphone that did not have proper documentation of two mg of waste, and two lorazepam that did not have proper documentation of 2 mg of waste. There were 11 instances of removing a larger size syringe than necessary and waste was documented with a witness.

5. On February 8, 2008, the Respondent admitted to police that she diverted morphine and hydromorphone (brand name Dilaudid) from patients for her own use. Morphine and hydromorphone are narcotic analgesics and Schedule II controlled substances pursuant to Wis. Stat. § 961.16.

6. Narcotics are administered in a controlled manner, with documentation of the amount of narcotic removed from the Pyxis MedStation system. When a nurse cannot administer all of the narcotic to a patient, the nurse is required to destroy or "waste" the excess in the presence of another nurse, who then witnesses the destruction of the drug. The Respondent explained that, when she was able, she removed doses of narcotics that were greater than the amount prescribed, and that she saved the excess for herself instead of wasting it. She then used a second syringe, put saline in that syringe, and wasted the saline. She took the excess narcotic later -- after work or at the end of her shift. The Respondent admitted injecting the medications into her arm and admitted using the narcotics in the locker room or changing area.

7. The Respondent states that she is addicted to alcohol and other drugs, and reports that she previously received treatment for cocaine addiction.

8. No evidence/documentation of patient harm was found.

9. On July 18, 2008, the Respondent was charged in Outagamie County Circuit Court case number 2008CM000995 with one count of Possession/Illegally Obtained Prescription, in

violation of Wis. Stat. § 450.11(7)(h), a Class U misdemeanor. On February 16, 2009, the Respondent was convicted after entering a no contest plea.

10. The Respondent, by obtaining and using a drug other than in the course of legitimate practice and as otherwise prohibited by law, as described above, has committed misconduct and unprofessional conduct.

11. The Respondent, by engaging in the conduct described above, has abused drugs to an extent that it has impaired her ability to safely and reliably practice nursing.

12. As set out in the Procedural History above, the Complaint and a Notice of Hearing were duly served on the Respondent by mailing them to her at her last known address on April 3, 2009. On or about September 14, 2009, the Division of Enforcement duly served a Notice of Motion and Motion for Default Judgment and supporting documents to the Respondent at the same address. On September 21, 2009, the Division of Hearings and Appeals mailed a Notice of Hearing on Default Motion to the Respondent to the same address. The Respondent did not file an Answer to the Complaint, did not appear at the hearing on the motion for default, and did not otherwise respond to the Complaint or the motion for default.

### CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. §§ 441.07 and 441.50(3)(b).

2. Wisconsin Administrative Code § RL 2.08(1) provides in relevant part that "[t]he 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" and that "[s]ervice by mail is complete upon mailing." Because the Complaint and a Notice of Hearing, the Notice of Motion and Motion for Default Judgment, and the Notice of Hearing on Motion for Default, were mailed to the Respondent at her last known address, the Respondent was duly served with these papers pursuant to Wis. Admin. Code § RL 2.08.

3. The Respondent has defaulted in this proceeding pursuant Wis. Admin. Code § RL 2.14 by failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § RL 2.09. Allegations in a complaint are deemed admitted when not denied in an answer. Wis. Admin. Code § RL 2.09. The Respondent has admitted to the allegations of the Complaint by default by not filing an Answer.

4. Pursuant to Wisconsin Stat. § 441.07(1)(d), the Board of Nursing has authority to "revoke, limit, suspend or deny renewal of a license of a registered nurse" if the board finds that the registered nurse has engaged in "misconduct or unprofessional conduct." Wisconsin Administrative Code § N 7.04(2) defines "misconduct or unprofessional conduct" as used in Wis. Stat. § 441.07(1)(d) to include the following conduct: "Administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law." The Respondent's conduct described in Findings of Fact paragraphs 4 through 6 constituted misconduct or unprofessional conduct contrary to Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(2).

5. Pursuant to Wisconsin Stat. § 441.07(1)(c), the Board of Nursing has authority to “revoke, limit, suspend or deny renewal of a license of a registered nurse” if the board finds that the registered nurse has engaged in “[a]cts which show the registered nurse ... to be unfit or incompetent by reason of abuse of alcohol or other drugs.” Wisconsin Administrative Code § N 7.03(2) defines “abuse of alcohol or other drugs” as used in Wis. Stat. § 441.07(1)(c) “the use of alcohol or any drug to an extent that such use impairs the ability of the licensee to safely or reliably practice.” The Respondent’s conduct described in Findings of Fact paragraphs 4 through 7 constituted abuse of alcohol or other drugs contrary to Wis. Stat. § 441.07(1)(c) and Wis. Admin. Code § N 7.03(2).

### DISCUSSION

The Respondent’s conduct set out in paragraphs 4 through 7 of the Findings of Fact constitute “misconduct or unprofessional conduct” and “abuse of alcohol or other drugs” for which the Board of Nursing may revoke, limit, or suspend her license as a registered nurse pursuant to Wis. Stat. § 441.07(1).

In terms of disposition, the Division of Enforcement requests that the Respondent’s license to practice nursing be revoked. The Division of Enforcement asks further that in the event that the Respondent’s license is later reinstated pursuant to the procedure described in Wis. Stat. § 441.07(2), that the reinstated license be subject to an indefinite suspension, stayed, with a five-year impairment order for monitoring the Respondent’s treatment, work performance and abstinence from the use of controlled substances and alcohol, the terms of which would be as deemed appropriate by the Department Monitor and the Board’s designee. The Division requests also that the Respondent be ordered to pay the full costs of its investigation and of these proceedings.

The purpose of discipline is principally to protect the public from the risk of harm resulting from other instances misconduct or unprofessional conduct or abuse of alcohol or other drugs. The Respondent’s failure to cooperate with the Board’s investigation and to participate in these proceedings establish that she could not be reasonably relied upon to comply with any Board order which might have been considered in an effort to limit or monitor her ability to safely practice. In view of the Respondent’s apparent indifference to these proceedings, the relief requested by the Division is necessary and appropriate to protect the public.

The Board of Nursing has the authority pursuant to Wis. Stat. § 441.50(6)(a) to recover the costs of investigations and disposition of cases that have resulted in any adverse action being taken against a registered nurse. The Respondent should be assessed the full amount of recoverable costs. Payment of assessed costs would be necessary before the Respondent’s license could be reinstated pursuant to Wis. Stat. § 441.07(2). If the Board assesses costs against the Respondent, these amount of costs will be determined pursuant Wis. Admin. Code § RL 2.18.

**ORDER**

For the reasons set forth above, IT IS ORDERED that the license of the Respondent Jennifer L. Schlorf to practice nursing in the State of Wisconsin be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that in the event that the Respondent's license is later reinstated pursuant to Wis. Stat. § 441.07(2), that she would then be subject to indefinite suspension, stayed, with a five-year impairment order for monitoring the Respondent's treatment, work performance, and abstinence from controlled substances and alcohol, the precise terms of which would be as determined to be appropriate by the Department Monitor and the Board's designee.

IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. After the amount is established payment shall be made by certified check or money order payable to the Wisconsin Department of Regulation and Licensing and sent to:

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

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Jennifer L. Schlorf.

Dated at Milwaukee, Wisconsin on November 12, 2009.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
819 N. 6<sup>th</sup> Street, Room 92  
Milwaukee, Wisconsin 53203  
Telephone: (414) 258-6736  
FAX: (414) 227-3818

By: William S. Coleman, Jr.  
William S. Coleman, Jr.  
Administrative Law Judge