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Before The
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against **VICTORIA S. TEGGE, R.N.**,
Respondent

FINAL DECISION AND ORDER

Order No. 0000117

Division of Enforcement Case No. 08 NUR 291

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 the 25 day of March, 2010.

A handwritten signature in cursive script, appearing to read "Karen Ann", written over a horizontal line.

Member
Board of Nursing



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

In the Matter of the Disciplinary Proceedings
Against **VICTORIA S. TEGGE, R.N.**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-09-0051

Division of Enforcement Case No. 08 NUR 291

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

Victoria S. Tegge, R.N.
86 ½ N. Boardman
Fond du Lac, WI 54935

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 original Complaint in this matter was issued on April 2, 2009. On April 3, 2009, the Complaint and a Notice of Hearing were sent to Victoria S. Tegge (the "Respondent") by certified mail at her address of record with the Department of Regulation and Licensing ("Department"). 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." The Department received written confirmation that the Complaint had been delivered to the Respondent on or about April 4, 2009. No Answer to the Complaint was filed or served by or on behalf of the Respondent.

On September 10, 2009, Administrative Law Judge William Coleman (ALJ) of the Division of Hearings and Appeals conducted an initial prehearing telephone conference with both the Respondent and Attorney Sandra Nowack of the Division of Enforcement participating.

The Respondent responded to the notice and participated in the telephone conference. During the telephone conference, a hearing schedule was established that included setting deadlines for the exchange of exhibits and witness lists, and identification of dates for a final prehearing telephone conference and for the contested case hearing. This schedule was then documented by a "Prehearing Conference Report, Notice of Hearing, and Scheduling Order" dated September 21, 2009 and mailed to the Respondent at her last reported mailing address.

During the prehearing telephone conference, Attorney Nowack expressed her intent to file and serve an Amended Complaint, and she did so on September 14, 2009. No Answer to the Amended Complaint was filed or served by or on behalf of the Respondent.

The Scheduling Order dated September 21, 2009 required the Respondent to file and serve a witness list no later than November 13, 2009, and to file and serve any proposed exhibits no later than December 1, 2009. The Respondent did not file or serve a witness list or any proposed exhibits.

A prehearing telephone conference was scheduled for December 3, 2009 at 10:00 a.m. When the ALJ attempted to contact the Respondent at that time by using the telephone number that had been used to contact her for the previous telephone conference (902-904-5136), an automated message was received that indicated that the telephone number was no longer in service. The Respondent had not contacted the undersigned or Attorney Nowack to provide a functioning telephone number for the telephone conference, and consequently the ALJ was unable to contact the Respondent for the telephone conference. As a result of the Respondent's failure to participate in the telephone conference, the contested case hearing that had been scheduled for December 10, 2009 was adjourned.

A notice dated December 3, 2009 for another telephone conference to be held on December 18, 2009 was sent to the Respondent at her last reported address. This notice directed the Respondent to contact the ALJ with a telephone number at which she could be contacted for the telephone conference. The Respondent did not respond to the notice and thus she did not participate in the telephone conference that was held on December 18, 2009. During this telephone conference Attorney Nowack expressed her intent to file a motion for default.

On December 21, 2009, Attorney Nowack filed and served a Notice of Motion and Motion for Default, with a supporting affidavit.

On December 21, 2009, the ALJ issued a Notice of Hearing on Default Motion. This notice of hearing scheduled a hearing on the motion for default on January 4, 2010 at 1:00 p.m. at the offices of the Department in Madison. The notice of hearing informed the Respondent that she could attend the hearing on the motion in person or by telephone, and that if she chose to attend by telephone she was instructed to provide the ALJ with the telephone number at which she could be contacted for the hearing. The hearing on the motion for default was conducted as scheduled. The Respondent did not appear at the hearing either in person or by telephone and she did not otherwise respond the motion for default. At the hearing, the ALJ informed Attorney Nowack that the motion for default and the relief requested by the Department would be granted in a proposed decision.

FINDINGS OF FACT

1. Victoria S. Tegge, R.N., (Respondent), date of birth April 25, 1959, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 126866, which was first granted July 21, 1997.

2. The Respondent's last address reported to the Department of Regulation and Licensing is 86½ N. Boardman, Fond du Lac, WI 54935.

3. On July 2, 2008, Fond du Lac police were summoned to the Respondent's residence because the Respondent was unresponsive. The Respondent told a responding officer that somehow a Fentanyl patch had been broken open and she had accidentally rubbed it on her arm. On July 3, 2008, the Respondent did not report for work. The Respondent told her employer that she had an allergic reaction to a new prescription (for a medication other than Fentanyl).

4. On July 20, 2008, staff at All About Life nursing home discovered that one 25mg Fentanyl patch was missing from a medication cart's locked narcotic box. The Respondent confirmed that she had been in possession of the key to the narcotic box during the time the medication disappeared. The Respondent further confirmed that she had not left the box unlocked at any time.

5. On July 20, 2008, the Respondent purportedly wasted two Fentanyl patches. Wasting is accomplished by cutting the patch in half and disposing it in the sharps container. After the Respondent purportedly wasted the two patches, the wrappers were found in the sharps container but the patches were not there.

6. On September 17, 2008, the Fond du Lac District Attorney's Office, in Fond du Lac County Circuit Court Case No. 2008CM843, charged the Respondent with theft in violation of Wis. Stats. §§ 934.20(1)(a) and (3)(a). The criminal complaint alleged that the Respondent stole Fentanyl from the nursing home at which she was employed.

7. On November 11, 2008, the court found that the Respondent would participate in a deferred prosecution program, with the following conditions:

- a. No further violations of state or federal criminal law;
- b. Participate in an AODA assessment and follow through;
- c. Participate and attend all counseling as recommended;
- d. File monthly written reports certifying compliance;
- e. No use or possession of controlled substances.

8. On February 12, 2009, a Division of Enforcement consumer protection investigator wrote to the Respondent at her address of record, asking the Respondent to provide information concerning the Division's investigation into the alleged thefts. The investigator asked the Respondent to provide the information by February 27, 2009.

9. As of April 1, 2009, Respondent had not responded to the Division's inquiries, nor had she otherwise communicated with the Division concerning the investigation or the charges against her.

10. The only reasonable inference from the above facts is that the Respondent stole the Fentanyl for her own use.

11. Fentanyl is a schedule II controlled substance, pursuant to Wis. Stat. § 961.16(3)(f), for which a prescription is required.

12. As of September 11, 2009, Respondent had not obtained an AODA assessment. Respondent denies that she diverted the Fentanyl and believes a co-worker is responsible. She states that she had a prescription for Fentanyl for back pain.

13. The Respondent explained that her reaction to Fentanyl on July 2, 2008, occurred because she took her husband's Xanax along with the Fentanyl. She acknowledged that she did not have a prescription for the Xanax.

14. Xanax (Alprazolam) is a Schedule IV controlled substance pursuant to Wis. Stat. sec. 961.20(2)(a), for which a prescription is required.

15. 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 has engaged in unprofessional conduct.

16. 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.

17. The Respondent, by failing to cooperate with the Division of Enforcement's investigation, has engaged in unprofessional conduct.

18. As set out in the Procedural History above, the original 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 an Amended Complaint to the Respondent at her last known address. On December 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 or to the Amended Complaint, did not appear at the hearing on the motion for default, and did not otherwise respond or contest 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, the Amended Complaint, the Notice of Motion and Motion for Default, and the Notice of Hearing on

Motion for Default, were all 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 either to the Complaint or to the Amended 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(3). The Respondent has admitted to the allegations of both the Complaint and the Amended 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 the Findings of Fact above constituted misconduct or unprofessional conduct contrary to Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(2). The Respondent’s failure to cooperate with the Board in its investigation likewise constitutes unprofessional conduct contrary to Wis. Stat. § 441.07(1)(d).

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) to be “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 above 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 the Findings of Fact constitutes “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.

One of the purposes of discipline is to protect the public from the risk of harm resulting from potential future instances misconduct, unprofessional conduct, or abuse of alcohol or other drugs. The Respondent's failure to cooperate with the Board's investigation and her failure to participate in these proceedings at any time other than for the prehearing telephone conference on September 10, 2009, establishes 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 Victoria S. Tegge 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 Victoria S. Tegge.

Dated at Milwaukee, Wisconsin on February 2, 2010.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
819 N. 6th 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