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**Before The
State Of Wisconsin
Board of Nursing**

In the Matter of the Disciplinary Proceedings
Against **FRANCELLA WILLIAMS, L.P.N.**,
Respondent

FINAL DECISION AND ORDER

Order 0000254

Division of Enforcement Case No. 09 NUR 254

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

Francella Williams
1506 South Adams, Apt. 111
Marshfield, WI 54449

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

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 on June 3, 2010, and having made minor corrections to the Proposed Decision ¹now orders that the corrected Proposed Decision shall be and hereby is the Final Decision and Order of the State of Wisconsin, Board of Nursing.

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Regulation and Licensing, Division of Enforcement (the "Division") filed a formal Complaint against the Respondent,

¹ Paragraph 7 of the Conclusions of Law of the Proposed Decision was corrected to include the language of the Nurse Practice Act which authorizes the Board to discipline licensed practical nurses. The citation to the Wisconsin Administrative Code in paragraph 2 of the Conclusions of Law was corrected to include the RL chapter numbers which appeared to be inadvertently omitted.

Francella Williams. The Division filed said Complaint with the Division of Hearings and Appeals on January 7, 2010. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing via certified and regular mail to Respondent Williams at her most recent address on file with the Department of Regulation and Licensing; 1506 South Adams, Apt. 111, Marshfield, WI, 54449. The Notice of Hearing stated that Respondent Williams was required to file a written Answer to the Complaint within 20 days, failing which "[she would] be found to be in default and a default judgment [could] be entered against [her] on the basis of the Complaint and other evidence and the Wisconsin Board of Nursing [could] take disciplinary action against [her] and impose the costs of the investigation, prosecution and decision of this matter upon [her] without further notice or hearing."

The above documents were returned to the Division as "not deliverable as addressed, unable to forward, return to sender." The Division could not forward these documents to Respondent Williams, as it was not (and is not) aware of any other address for Respondent Williams other than the one provided above. To date, no Answer has been filed.

On January 12, 2010, 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 Respondent Williams and Attorney Jeanette Lytle of the Division of Enforcement for March 8, 2010. This Notice instructed Respondent Williams to contact the undersigned ALJ to provide the telephone number for which she could be reached for the March 8, 2010 telephone conference, and was sent to the address on file for Respondent Williams, as provided above.

The Notice was again returned as "return to sender, moved left no address, unable to forward." As such, Respondent Williams did not contact the undersigned ALJ with a telephone number that she could be reached at for the March 8, 2010 telephone conference, and the telephone conference that was conducted on that date was without the Respondent's participation.

At the March 8, 2010 conference, Attorney Lytle made a motion for default pursuant to Wis. Admin. Code § RL 2.14. The undersigned ALJ summarily accepted Attorney Lytle's default motion and issued a Notice of Default instructing Respondent Williams that she was in default and that findings would be made and an Order entered on the basis of the Complaint and other evidence. The Notice of Default further ordered Attorney Lytle to provide the undersigned ALJ with the Division's written recommendations for discipline and the assessment of costs in this matter by March 19, 2010. It was mailed to Respondent Williams at the last address on record for her, 1506 South Adams, Apt. 111, Marshfield, WI, 54449. Attorney Lytle provided the undersigned ALJ with the Division's written recommendations as to discipline and costs on or about March 11, 2010.

Respondent Williams has failed to respond to either the Notice of Default issued against her, or the written recommendations provided by Attorney Lytle on March 11, 2010.

FINDINGS OF FACT

On the evidence presented, the undersigned ALJ makes the following findings of fact:

1. Francella Williams, L.P.N., Respondent, date of birth October 1, 1961, is licensed by the Wisconsin Board of Nursing as a licensed practical nurse in the State of Wisconsin, pursuant to license number 32300, which was first granted January 7, 1994.

2. Respondent Williams' most recent address on file with the Wisconsin Board of Nursing is 1506 South Adams, Apt. 111, Marshfield, WI, 54449.

3. On or about April 29, 2005, Respondent Williams underwent a pre-employment drug test, which was positive for cocaine. The matter was reported to the Division of Enforcement and investigative file 05 NUR 126 was opened on June 2, 2005. Respondent's license had expired on April 30, 2005, and investigators were unable to locate her. Therefore, the case was closed on September 8, 2005.

4. Respondent Williams renewed her license on December 23, 2005.

5. On or about July 24, 2009, a narcotics audit at Respondent Williams' place of employment revealed that a card of oxycodone 7.5 mg was missing. Oxycodone is an opioid analgesic and Schedule II controlled substance. The facility investigated and Respondent Williams admitted to the theft.

6. In September of 1994, Respondent Williams' license to practice nursing in the State of Minnesota was "indefinitely suspended." The listed bases for this action included "fraud," "practicing without a valid license," "substandard or inadequate care," and "*diversion of a controlled substance*" (emphasis added). See March 8, 2010 Affidavit of Steven Rohland, Exhibit A.

7. Previously, in November of 2005, Respondent Williams' license to practice nursing in the State of Iowa was likewise "indefinitely suspended." The listed basis for this action was "*unauthorized dispensing of medication*." The licensee was "charged with being involved in the *manufacture, possession, distribution or use of a controlled substance*" (emphasis added). See March 8, 2010 Affidavit of Steven Rohland, Exhibit A.

8. In February of 2007, Respondent Williams license to practice nursing in the State of Minnesota was again suspended indefinitely.² The listed bases for this action included "practicing without a valid license," "*unable to practice safely by reason of alcohol or...*"³,

² Respondent Williams' license to practice nursing in Minnesota had apparently been reinstated.

³ Unfortunately, the Discipline Case Study Report cuts off at this point. See March 8, 2010 Affidavit of Steven Rohland, Exhibit A. However, it can reasonably be inferred that the sentence went on to implicate another intoxicant(s).

“unable to practice safely,” and “substandard or inadequate care” (emphasis added). *See* March 8, 2010 Affidavit of Steven Rohland, Exhibit A.

9. As set out in the Procedural History above, a Complaint and Notice of Hearing were sent to Respondent Williams at her most recent address on file with the Department of Regulation and Licensing/Wisconsin Board of Nursing, (1506 Adams, Apt. 111, Marshfield, WI 54449), on January 7, 2010.

10. On or about January 12, 2010, the undersigned ALJ sent a Notice of Telephone Prehearing Conference for March 8, 2010 to Respondent Williams at the above-listed address.

11. Respondent Williams did not appear at this hearing, and the Division made a motion for default which was summarily accepted by the undersigned ALJ.

12. On or about March 8, 2010, the undersigned ALJ sent a Notice of Default to Respondent Williams at her last known address.

13. Respondent Williams has not responded to this Notice, or otherwise to the Complaint against her.

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. Wis. Stat. § 440.03(1) provides that the department (of Regulation and Licensing) may promulgate rules defining uniform procedures to be used by the department... and all examining boards and affiliated credentialing boards attached to the department or an examining board, for... conducting [disciplinary] hearings. These rules are codified in Wis. Admin. Code chs. RL 1-9.

3. 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 Notice of Hearing, Notice of Telephone Prehearing Conference, and Notice of Default were mailed to Respondent Williams at her last known address, she was duly served with these papers pursuant to Wis. Admin. Code § RL 2.08.

4. As the licensee, it was Respondent Williams’ responsibility to keep her address on record with the Department of Regulation and Licensing current. Wis. Stat. § 440.11(1).

5. Respondent Williams 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.

6. Allegations in a complaint are deemed admitted when not denied in an answer. Wis. Admin. Code § RL 2.09. Respondent Williams has admitted to the allegations of the Complaint by default by not filing an Answer.

7. Pursuant to Wis. 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, a nurse-midwife or a licensed practical nurse” if the board finds that the nurse has engaged in “misconduct or unprofessional conduct.”

8. Wis. Admin. Code § N 704 defines “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.”

9. Wis. Admin. Code § N 704(2) further defines “misconduct or unprofessional conduct” to include: “Administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law.”

10. The Respondent’s conduct described in Findings of Fact paragraphs 3 and 5 constitutes misconduct or unprofessional conduct contrary to Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code §§ N 7.04 and 7.04(2). Thus, she is subject to discipline pursuant to 441.07(1)(d).

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against her, Respondent Williams has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that Respondent Williams stole a card of oxycodone 7.5 mg from her employer in July of 2009, and had previously, (in April of 2005), underwent a pre-employment drug test, in which she tested positive for cocaine. Such conduct clearly violates Wis. Admin. Code §§ N. 7.04 and N. 7.04(2), which includes as misconduct the “[a]dministering, supplying or obtaining [of] any drug other than in the course of legitimate practice or as otherwise prohibited by law.” Respondent Williams is thus subject to discipline pursuant to Wis. Stat. § 441.07(1)(d). The only question that remains is what kind of discipline is appropriate.

Appropriate Discipline

The Division requests that Respondent Williams' license to practice nursing be revoked. In support of this recommendation, it provides evidence in the form of Discipline Case Summary Reports⁴ that show that in addition to testing positive for cocaine and stealing a card of oxycodone while licensed as a licensed practical nurse in Wisconsin, Respondent Williams has had her license to practice nursing suspended in at least two other states for similar drug violations. See March 8, 2010 Affidavit of Steven Rohland, Exhibit A. In light of this uncontested evidence, the Division's request will be granted.

Indeed, the purpose of discipline is to (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Respondent Williams' numerous allegations of drug misappropriation evinces that she has not yet been rehabilitated, and that she is still very much a danger to the public. Her inability to keep the Division apprised of her whereabouts only strengthens this concern. The relief requested by the Division is thus appropriate and even necessary to protect the public from future instances of misconduct by the respondent.

Costs

The Division requests that Respondent Williams be ordered to pay the full costs of its investigation and of these proceedings.

In *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), the Chiropractic Examining Board found that:

The ALJ's recommendation and the ... Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder..., is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties
- 4) The respondents cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of

⁴ Said summary reports were obtained from a data base called NURSUS. NURSUS is an organization of licensing authorities in states that have adopted the Nurse Licensure Compact. March 8, 2010 Affidavit of Steven Rohland, ¶¶ 2-3.

- disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct;
- 7) Any other relevant circumstances.

The respondent, by nature of her being in default has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. To the contrary, her conduct is of a serious nature. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven (being none), or that certain factual findings were investigated and litigated that were unnecessary. Given the fact that the Department of Regulation and Licensing is a "program revenue," agency, whose operating costs are funded by the revenue received for licensees, fairness here dictates imposing the costs of disciplining the respondent upon the respondent and not fellow members of the chiropractic profession who have not engaged in such conduct."

For many same reasons as cited in the *Buenzli-Fritz* decision, Respondent Williams should be assessed the full amount of recoverable costs. Her alleged conduct is of a serious nature, there is no argument that certain factual findings were investigated and litigated unnecessarily, and given the program revenue nature of the Department of Regulation and Licensing, fairness again dictates imposing the costs of disciplining Respondent Williams on Respondent Williams, and not fellow members of the nursing profession who have not engaged in such conduct. Payment of assessed costs will 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

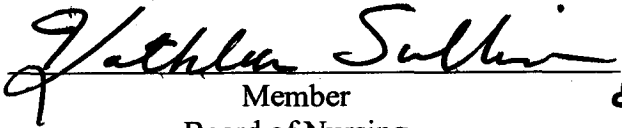
For the reasons set forth above, IT IS ORDERED that the license of the Respondent Francella Williams, L.P.N. to practice nursing in the State of Wisconsin be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent Williams 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**

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 10 day of June, 2010.


Member
Board of Nursing 