

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The  
State Of Wisconsin  
Board of Nursing

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In the Matter of the Disciplinary Proceedings  
Against **Kristin K. Carlson**, Respondent

FINAL DECISION AND ORDER  
Order No. 0000290

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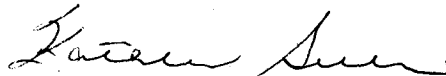
The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 22 day of July, 2010.



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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  
KRISTIN K. CARLSON, Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. DRL-10-0009

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DOE Case Nos. 06 NUR 071 and 07 NUR 264

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

Kristin K. Carlson  
105 South State Street  
Waupaca, WI 54981-1252

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

These proceedings were initiated when the Department of Regulation and Licensing, Division of Enforcement (the "Division") filed a formal Complaint against the Respondent, Kristin K. Carlson. The Division filed said Complaint with the Division of Hearings and Appeals on January 20, 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 Carlson at her most recent address on file with the Department of Regulation and Licensing; E579 Berkshire Lane, Waupaca, WI, 545981. The Notice of Hearing stated that Respondent Carlson 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."

To date, no Answer has been filed.

On February 16, 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 Carlson and Attorney Sandra Nowack of the Division of Enforcement for March 9, 2010. This Notice instructed Respondent Carlson to contact the undersigned ALJ to provide the telephone number for which she could be reached for the March 9, 2010 telephone conference, and was sent to the address on file for Respondent Carlson, as provided above. Upon notification from the United States Post Office that Respondent Carlson had a new address, the above referenced Notice was sent to Respondent Carlson at her new address, 105 S. State Street, Waupaca, WI, 54981.

Regardless, Respondent Carlson did not contact the undersigned ALJ with a telephone number that she could be reached at for the March 9, 2010 telephone conference.

Because the Division was not available for the March 9, 2010 telephone conference, the conference was continued until March 30, 2010. A Notice of Continued Telephone Prehearing Conference was sent to Respondent Carlson at her new address.

Respondent Carlson again did not contact the undersigned ALJ with a telephone number that she could be reached at for the March 30, 2010 telephone conference.

At the March 30, 2010 conference, Attorney Nowack made a motion for default pursuant to Wis. Admin. Code § RL 2.14. She advised the undersigned ALJ that she had been made aware of the respondent's State Street address in June of 2009, and had sent the Complaint and Notice of Hearing to respondent at that address as well as to her Berkshire Lane address. She further advised that she had initially had contact with the Respondent Carlson, and that Respondent Carlson had agreed to the revocation of her nursing license. Unfortunately, Attorney Nowack noted that she lost contact with the respondent after this occasion.

On the above facts, the undersigned ALJ accepted Attorney Nowack's default motion and issued a Notice of Default instructing Respondent Carlson 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 Nowack to provide the undersigned ALJ with the Division's written recommendations for discipline and the assessment of costs in this matter by April 6, 2010. It was mailed to Respondent Carlson at the last address on record for her, 105 S. State Street, Waupaca, WI, 54981. Attorney Nowack provided the undersigned ALJ with the Division's written recommendations as to discipline and costs on or about April 6, 2010.

Respondent Carlson has failed to respond to either the Notice of Default issued against her, or the written recommendations provided by Attorney Nowack on April 6, 2010.

Thus, on the evidence presented, the undersigned ALJ makes the following:

FINDINGS OF FACT

1. Kristin K. Carlson, Respondent, date of birth April 5, 1972, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 135371, which was first granted July 10, 2000.
2. Respondent Carlson's address of record reported to the Department of Regulation and Licensing is E579 Berkshire Lane, Waupaca, WI 54981.
3. Respondent Carlson elected not to renew her license as a registered nurse when it expired on February 29, 2008, but could renew it pursuant to Wis. Stat. § 440.08(3)(a) by paying the required fees.
4. In 2006, Respondent Carlson was employed as a registered nurse by Riverside Medical Center in Waupaca, Wisconsin, and worked on the Medical/Surgical Unit.
5. On approximately February 13, 2006, the Director of Pharmacy noted an increase in the use of morphine in the 10mg vial on the Medical/Surgical Unit and ran an audit of controlled substance withdrawal from the Med/Surg Pyxis dispensing unit. The reports revealed that Respondent Carlson had been removing and wasting an abnormal amount of morphine in the 10mg vial. In many cases, it did not appear to be necessary to remove a 10 mg vial. The reports also showed that Respondent Carlson had administered significantly more doses to patients than did other nursing staff assigned to those patients.
6. The Director of Nursing (DON) asked the manager of the Medical/Surgical Unit to conduct a chart review of the patients indicated on the Pyxis report and to carefully monitor Respondent Carlson's practice and behavior.
7. On February 17, 2006, another Riverside pharmacist notified the DON that he had great concerns regarding Respondent Carlson's behavior and use of narcotics, and that he had received reports from other staff nurses regarding Respondent Carlson's atypical behavior. Physicians, too, had observed that Respondent contacted them to increase dosages or request stronger pain medications at a rate far beyond that of other nurses.
8. The manager of the Medical/Surgical Unit notified Respondent Carlson of the concerns and requested a urine specimen per hospital policy. Respondent denied any wrong-doing and refused to submit to toxicology screening. Respondent was suspended from her employment pending investigation.
9. On February 20, 2006, Respondent Carlson was terminated from her employment for refusing to give a urine sample, which was in accordance with hospital policy and procedure.
10. Under the facts set forth above, it can be reasonably inferred that Respondent Carlson refused to provide the urine sample because the sample would have established that Respondent illegally used controlled substances.
11. In 2007, Respondent Carlson was employed as a registered nurse by Affinity Health System and worked on the mental health floor (5E) at St. Elizabeth Hospital in Appleton, Wisconsin.

12. Between May 9, 2007 and June 7, 2007, while working as a registered nurse, Respondent Carlson repeatedly diverted Demerol (meperidine) for her personal use. She did not have a prescription for this medication. Respondent does not know precisely how much meperidine she took, but acknowledges that it could have been more than forty 75mg syringes.
13. Respondent Carlson admitted that she was addicted to the meperidine.
14. Pursuant to Wis. Stat. § 961.16(3)(k), meperidine is a schedule II controlled substance, for which a prescription is required.
15. On July 30, 2008, in Outagamie County Circuit Court, case number 2008CF30, Respondent Carlson pled no contest and was convicted of a felony charge of possession of narcotic drugs in violation of Wis. Stat. § 961.43(3g)(am). The court withheld sentence on the felony and placed Respondent on probation for two years, with six months in jail. Respondent Carlson was also convicted of the following misdemeanor counts:
  - a. Obtain prescription drug by fraud, in violation of Wis. Stat. § 450.11(7)(a);
  - b. Theft, in violation of Wis. Stat. § 943.21(1)(a);
  - c. Possession of drug paraphernalia, in violation of Wis. Stat. § 961.573(1).
16. As noted in the Procedural History, Respondent Carlson has failed to participate in these disciplinary proceedings 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. Wisconsin 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 ch. RL.
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 Carlson 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 Carlson's responsibility to keep her address on record with the Department of Regulation and Licensing current. Wis. Stat. § 440.11(1).
5. Respondent Carlson 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 Carlson 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" if the Board finds that the registered nurse has engaged in "misconduct or unprofessional conduct."
8. Pursuant to Wis. Stat. § 441.07(1)(c), the Board of Nursing further 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, nurse-midwife or licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.
9. Wisconsin Admin. Code § N 704(2) 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. Respondent Carlson, by the conduct described in Findings of Fact ¶¶ 5, 7, 10, 12 and 15, has committed misconduct and unprofessional conduct, as defined by Wis. Admin. Code § N 7.04(2) and is thus subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).
11. Wisconsin Admin. Code § N 7.04(1) further defines misconduct to include "Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing."
12. Respondent Carlson, by the conduct described in Findings of Fact Fact ¶¶ 5, 7, 10, 12 and 15, has committed misconduct or unprofessional conduct as defined by Wis. Admin. Code § N 7.04(1) and is thus subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).
13. Wisconsin Admin. Code § N 7.03(2) defines "abuse of alcohol or other drugs" as "the use of alcohol or any drug to an extent that such use impairs the ability of the licensee to safely or reliably practice."
14. Respondent Carlson's theft of narcotics in the course of her work as a nurse, for purposes of her own use, establishes that she has abused drugs to an extent that such use impairs her ability to reliably practice, as defined by Wis. Admin. Code § N 7.03(2), which again subjects her to discipline pursuant to Wis. Stat. § 441.07(1)(c).

15. Respondent's failure to participate in the disciplinary process is an indication of Respondent's lack of responsiveness to the Board's rules and Orders. The Board's rules exist to protect the public.
16. The nature of Respondent Carlson's misconduct, indicative of untreated addiction issues, requires revocation of her license to practice because of the inherent risk to health care consumers.
17. 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 contact. *State v. Aldrich*, 71 Wis. 2d 206 (1976).
18. When the Board of Nursing imposes discipline, Wis. Stat. § 440.22(2) authorizes assessment of costs against the Respondent. The Board must exercise discretion in doing so. *See Noesen v. Pharmacy Examining Board*, 2008 WI App 52, par. 30; 311 Wis. 2d 237; 751 N.W.2d 385.
19. 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:
  - a. The number of counts charged, contested, and proven;
  - b. The nature and seriousness of the misconduct;
  - c. The level of discipline sought by the parties
  - d. The respondent's cooperation with the disciplinary process;
  - e. Prior discipline, if any;
  - f. 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 disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct;
  - g. Any other relevant circumstances.

*In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI),

20. Assessment of costs in this matter is justified because Respondent has a drug problem and an assessment of actual costs is a reasonable effort toward rehabilitation because it allows Respondent to assume responsibility for her actions. Respondent's failure to cooperate with the Board's investigation had resulted in the unnecessary expenditure of resources in attempting to locate her and involve her in these proceedings. Respondent's misconduct is not the result of mere human error, nor is it the result of minor rule infractions. Rather, Respondent's conduct is indicative of purposeful and



dangerous behaviors. Imposition of costs is further justified in this case to support the Board's goal of general deterrence, particularly because Respondent failed to cooperate with the investigative process.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of the Respondent Kristin K. Carlson, R.N. to practice nursing in the State of Wisconsin be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent Carlson shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. Respondent is not currently practicing nursing and will be unable to do so. Therefore, costs shall be payable before any future application for licensing will be considered by the Board. Payment shall be made by certified check or money order payable to the Wisconsin Department of Regulation and Licensing and sent to:

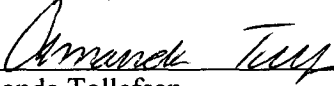
**Department Monitor  
Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935  
Telephone: (608) 267-3817  
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Kristin K. Carlson.

Dated at Madison, Wisconsin on May 12, 2010.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

By: \_\_\_\_\_

  
Amanda Tollefsen  
Administrative Law Judge