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Before The
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against SYLVIA A. ROBERSON, LPN,
Respondent

FINAL DECISION AND ORDER
Order 0000377

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 2 day of Sept, 2010.

A handwritten signature in cursive script, appearing to read "Karen Smith RN", 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 **SYLVIA A. ROBERSON, LPN,**
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-10-0030

Division of Enforcement Case No. 08 NUR 383

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

Sylvia A. Roberson, L.P.N.
1914 Greenway Cross #6
Fitchburg, WI 53713

Department of Regulation and Licensing, by

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

Wisconsin Board of Nursing
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, Sylvia A. Roberson. The Division filed said Complaint with the Division of Hearings and Appeals on May 6, 2010. The Division also filed a copy of the Complaint and a Notice of Hearing to Respondent Roberson at her most recent address on file with the Department of Regulation and Licensing; 1914 Greenway Cross # 6, Fitchburg, WI, 53713. The Notice of Hearing stated that Respondent Roberson 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 “RETURN TO SENDER MOVED LEFT NO ADDRESS UNABLE TO FORWARD RETURN TO SENDER.” The Division could not forward these documents to Respondent Roberson, as it was not aware of any other operating address for Respondent Roberson. (See June 17, 2006 Affidavit of Lori Graf and July 12, 2010 e-mail from Division Attorney Sandra Nowack, attached). To date, no Answer has been filed.

On May 24, 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 Roberson and Attorney Sandra Nowack of the Division of Enforcement for June 9, 2010. This Notice instructed Respondent Roberson to contact the undersigned ALJ to provide the telephone number for which she could be reached for the June 9, 2010, telephone conference, and was sent to the address on file for Respondent Roberson, as provided above.

The Notice was returned to the Division of Hearings and Appeals as “RETURN TO SENDER MOVED LEFT NO ADDRESS UNABLE TO FORWARD RETURN TO SENDER.” As such, Respondent Roberson did not contact the undersigned ALJ with a telephone number that she could be reached at for the June 9, 2010, telephone conference, and the conference that was conducted on that date was without her participation.

Upon Respondent Roberson’s failure to appear for the June 9, 2010, conference, the undersigned ALJ issued a Notice of Default instructing Respondent Roberson 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 June 18, 2010. It was mailed to Respondent Roberson at the last address on record for her, 1914 Greenway Cross # 6, Fitchburg, WI, 53713. Attorney Nowack provided the undersigned ALJ with the Division’s written recommendations as to discipline and costs on or about June 23, 2010.

Respondent Roberson has failed to respond to either the Notice of Default issued against her, or the written recommendations provided by Attorney Nowack on June 23, 2010.

FINDINGS OF FACT

1. Sylvia A. Roberson, L.P.N., Respondent (DOB 8/1/1976), is licensed by the Wisconsin Board of Nursing as a practical nurse in the state of Wisconsin pursuant to license No. 309703-31, which was first granted on March 24, 2008.
2. Respondent Roberson’s address on record with the Department of Regulation and Licensing is 1914 Greenway Cross #6, Fitchburg, WI 53713.

3. At all times relevant, Respondent Roberson was employed as a licensed practical nurse at St. Mary's Care Center in Madison, Wisconsin.
4. On October 22, 2008, nursing administration interviewed Respondent regarding missing controlled substances. Respondent Roberson initially denied the thefts, but eventually admitted taking a packet of 6 Lorazepam .5mg, and a packet of 6 Lorazepam 1.0mg, from the contingency box. Respondent explained she had been traumatized when ex-husband murdered her boyfriend. Respondent's employment was terminated.
5. On January 16, 2009, Respondent Roberson underwent an AODA assessment. She told the evaluator that she recently relocated to Madison from Virginia to escape the stress of the death of her boyfriend. She was on medical assistance, and was prescribed Lorazepam to help her sleep. She claimed to take the drug only at night to help her sleep. She said she diverted the drugs because her prescription for Lorazepam ran out in July and she was not eligible for insurance until November.
6. The AODA assessment recommended that Respondent Roberson undergo a psychiatric evaluation and schedule a visit with her primary care physician to determine if there is a better medication to address her issues of depression and anxiety.
7. Respondent Roberson had the following prescriptions filled between May 9, 2007 and February 27, 2009:
 - a. May 5, 2007- Tramadol- 10, 50mg tablets
 - b. November 13, 2007- Lorazepam- 10, 2mg tablets
 - c. December 6, 2007- Lorazepam- 20, 1mg tablets
 - d. December 13, 2007- Lorazepam- 40, 1mg tablets
 - e. January 8, 2008- Lorazepam- 40, 1mg tablets
 - f. January 30, 2008- Lorazepam- 40, 1mg tablets
 - g. February 22, 2008- Lorazepam- 40, 1mg tablets
 - h. March 22, 2008- Lorazepam- 40, 1mg tablets
 - i. May 20, 2008- Lorazepam- 40, 1mg tablets
 - j. December 9, 2008- Lorazepam- 40, 1mg tablets
 - k. December 26, 2008- Lorazepam- 40, 1mg tablets
 - l. January 11, 2009- Lorazepam- 40, 1mg tablets
 - m. January 26, 2009- Lorazepam- 40, 1mg tablets
 - n. February 11, 2009- Lorazepam- 40, 1mg tablets
 - o. February 27, 2009- Lorazepam- 40, 1mg tablets
8. Respondent Roberson called her doctors office on 1/17/09 and said she had a dental problem and needed pain medications. She was given an antibiotic and no pain medication. Respondent Roberson went to the doctor on 1/18/09 and said she had a car accident on 1/16/09 and needed pain medication. She was given Vicodin.

9. On April 30, 2009, Respondent Roberson received a psychiatric evaluation where she admitted to previously being addicted to Lorazepam. It was recommended that she schedule outpatient individual therapy. Respondent Roberson scheduled an appointment a month out opposed to the following week as recommended.

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 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 Roberson 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 Roberson’s responsibility to keep her address on record with the Department of Regulation and Licensing current. Wis. Stat. § 440.11(1).
5. Respondent Roberson 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 Roberson 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. 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. Respondent Roberson, by obtaining and using drugs 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).

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against her, Respondent Roberson has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that in October of 2008, Respondent Roberson stole a packet of 6 Lorazepam .5mg, and a packet of 6 Lorazepam 1.0mg, from her place of employment, and in January of 2009, lied about having a dental problem and then being in a car accident in order to obtain pain medications. It is also undisputed that on April 30, 2009, Respondent Roberson admitted to “previously¹” being addicted to Lorazepam. (Respondent Roberson further had her prescription for Lorazepam (40 1mg tablets) refilled 12 times between December 13, 2007, and February 27, 2009, with no prescription being refilled from May 20, 2008 and December 9, 2008). Such conduct clearly violates Wis. Admin. Code §§ N. 7.04 and N. 7.04(2), which include as misconduct the “... obtaining [of] any drug other than in the course of legitimate practice or as otherwise prohibited by law.”² Respondent Roberson 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 Roberson’s license to practice nursing be revoked:

“Revocation of Respondent’s license to practice nursing is justified because Respondent appears to have multiple mental health and addiction treatment needs including post traumatic stress and substance abuse relapse. Undersigned counsel attempted to work with Respondent to resolve this matter without revocation. Unfortunately, Respondent has demonstrated inability or unwillingness to fully cooperate with the disciplinary function of the Wisconsin Board of Nursing.³ The Board cannot now be reasonably assured that Respondent can safely practice.

¹ Unfortunately, there is no indication of when, exactly, this was. It is thus conceivable that the “previous” Lorazepam addiction admitted by Respondent Roberson was one in the same with her 2008 drug use.

² The Division further alleges that such conduct also constitutes drug abuse, as defined by Wis. Admin. Code § N 703(2). This section defines drug abuse as “the use of ... any drug to an extent that such use impairs the ability of the licensee to safely or reliably practice.” Because there are no allegations that show that Respondent Roberson’s Lorazepam use impaired her ability to safely or reliably practice, no violation can be found.

³ Such is evidenced in the June 17, 2010, Affidavit of Lori Graf, attached.

The purpose of state professional licensing laws is to protect the public from incompetent and potentially dangerous practices. See, e.g., *Gilbert v. Medical Examining Board*, 119 Wis. 2d 168, 188, citing *Laufenberg v. Cosmetology Examining Board*, 87 Wis.2d 175, 184 (1979), citations omitted. Respondent, by failing to participate in these proceedings[,] has demonstrated an inability to participate meaningfully in matters of critical importance to her career. Her disregard for these authorities and the health care consumers they protect leaves the Division with no choice but to seek revocation. Given Respondent's failure to provide an Answer to the allegations, the Wisconsin Board of Nursing cannot make any assurances of Respondent's fitness to practice. The safety of health care consumers would be unnecessarily compromised if Respondent faced anything other than revocation of her license"

Although revocation, at first glance, seems a bit harsh, in light of this uncontested evidence, the Division's request will be granted.

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 Roberson's multiple instances of drug misappropriation and/or misuse, (without any evidence of continued treatment), evinces that she needs rehabilitation, and that she is still very much a danger to the public. Her inability to keep the Division apprised of her whereabouts or to remain involved in the proceedings against her 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 Roberson 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

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 Roberson 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 unnecessarily⁴, and given the program revenue nature of the Department of Regulation and Licensing, fairness again dictates imposing the costs of disciplining Respondent Roberson on Respondent Roberson, 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 can 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

1. For the reasons set forth above, IT IS ORDERED that the license of the Respondent Sylvia Roberson, R.N. to practice nursing in the State of Wisconsin be and is hereby **REVOKED**.
2. IT IS FURTHER ORDERED that Respondent Roberson 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:


⁴ On the contrary, the respondent’s failure to cooperate with the Nursing Board’s investigation resulted in the unnecessary expenditure of resources in attempting to locate her.

**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**

3. IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Sylvia Roberson.

Dated at Madison, Wisconsin on July 14, 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