

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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Before The
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against **Wendy Jean Kearns, R.N.**, Respondent

FINAL DECISION AND ORDER

Order 0000 455

Division of Enforcement Case No. 09 NUR 038

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 14th day of October, 2010.

A handwritten signature in cursive script, appearing to read "Katarina L. Smith", 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 **WENDY JEAN KEARNS, R.N.**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-10-0045

Division of Enforcement Case # 09 NUR 038

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

Wendy J. Kearns, R.N.
309 North 95th Street, Apt. 104
Milwaukee, WI 53226

Department of Regulation and Licensing, Division of Enforcement, by

Attorney Jeanette Lytle
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Board of Nursing
Department of Regulation and Licensing
1400 East Washington Avenue
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, Wendy Kearns. The Division filed said Complaint with the Division of Hearings and Appeals on or about June 16, 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 Kearns at her most recent address on file with the Department of Regulation and Licensing; 309 N. 95th Street, Milwaukee, Wisconsin, 53066. The Notice of Hearing stated that Respondent Kearns 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.”

Respondent Kearns signed the return receipt for the Complaint and Notice of Hearing sent via certified mail on June 17, 2010.

On July 6, 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 Kearns and Attorney Jeanette Lytle of the Division of Enforcement for July 26, 2010. This Notice instructed Respondent Kearns to contact the undersigned ALJ to provide the telephone number for which she could be reached for the July 26, 2010 telephone conference, and was sent to the address on file for Respondent Williams, as provided above.

Respondent Kearns did not contact the undersigned ALJ with a telephone number that she could be reached at for the July 26, 2010, telephone conference. As such, the telephone conference that was conducted on that date was without her participation.

At the July 26, 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 Kearns 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 July 30, 2010. It was mailed to Respondent Kearns at the address on record for her, 309 N. 95th Street, Milwaukee, Wisconsin, 53066. Attorney Lytle provided the undersigned ALJ with the Division’s written recommendations as to discipline and costs on or about July 26, 2010.

Respondent Kearns has failed to respond to either the Notice of Default issued against her, or the written recommendations provided by Attorney Lytle on July 26, 2010.

FINDINGS OF FACT

1. Wendy Jean Kearns, R.N., Respondent, date of birth March 28, 1965, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 97668, which was first granted September 4, 1987

2. Respondent Kearns’ most recent address reported to the Department of Regulation and Licensing is 309 N. 95th Street, Apt. 104, Milwaukee, WI 53226.

3. Respondent Kearns’ was offered a nursing position at Golden Living Center-Bradley, in Milwaukee, Wisconsin. On January 2, 2009, Respondent submitted to a post-offer, pre-employment drug test in accordance with the facility’s policy.

4. On January 8, 2009, the testing laboratory reported to Golden Living Center that Respondent's drug screen was positive for cocaine. Respondent has since admitted to being addicted to cocaine.

5. As set out in the Procedural History, Respondent Kearns personally received the Division's Complaint on or about June 17, 2010. She was further mailed (1) a Notice of Telephone Prehearing Conference that set a telephone conference for July 26, 2010, and instructed her to provide the undersigned ALJ with a telephone number that she could be reached at for that conference, and (2) a Notice of Default instructing her that she was in default and that findings would be made and an Order entered on the basis of the Complaint and other evidence. Respondent Kearns failed to respond to any of these documents, and did not appear at the July 26, 2010 prehearing conference. Her lack of cooperation in this matter implies continued addiction.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07.

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 2.14 provides that "[i]f the respondent fails to answer as required by s. 2.09... the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence."

4. By failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § RL 2.09, Respondent Kearns has defaulted in this proceeding pursuant Wis. Admin. Code § RL 2.14.

5. Allegations in a Complaint are deemed admitted when not denied in an Answer. Wis. Admin. Code § RL 2.09. Thus, by failing to file an Answer, Respondent Kearns has admitted all allegations contained in the Complaint .

6. Wis. Stat. § 441.07 provides, in relevant party, that "[t]he board may... revoke, limit, suspend or deny renewal of a license of a registered nurse... if the board finds that the person committed any of the following: ...(d) Misconduct or unprofessional conduct."

7. Pursuant to Wis. Admin. Code § N 7.04(1), "misconduct" includes, "[v]iolating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing."

8. Pursuant to Wis. Admin. Code § N 7.04(20, “misconduct” further includes, “... obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law.”

9. Respondent, by engaging in the conduct set out in Findings of Fact ¶¶ 3-4, committed misconduct as defined by Wis. Admin. Code § N 7.04(1) and (2), and is thus subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

10. By nature of her failure to cooperate in these proceedings, Respondent should be assessed the full amount of recoverable costs. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI).

ORDER

IT IS THUS ORDERED, effective the date of this Order:

SUSPENSION

A.1. The license of Wendy J. Kearns, R.N., to practice as a nurse in the State of Wisconsin is SUSPENDED for an indefinite period of not less than five (5) years.

A.2. The privilege of Respondent Kearns to practice as a licensed practical nurse in the State of Wisconsin under the authority of another state’s license pursuant to the Nurse Licensure Compact is also SUSPENDED for an indefinite period of not less than five (5) years.

A.3. During the pendency of this Order and any subsequent related orders, Respondent Kearns may not practice in another state pursuant to the Nurse Licensure Compact under the authority of the Wisconsin license, unless Respondent receives prior written authorization to do so from both the Wisconsin Board of Nursing and the regulatory board in the other state.

A.4. Respondent Kearns shall mail or physically deliver all indicia of Wisconsin nursing licensure to the Department Monitor within 14 days of the effective date of this order. Limited credentials can be printed from the Department of Regulation and Licensing website at <http://drl.wi.gov/index.htm>.

A.5. Upon a showing by Respondent Kearns of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active nursing for every year the suspension is stayed, the Board may grant a petition under paragraph D.4 for return of full Wisconsin licensure.

A.6. The Board may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at anytime.

STAY OF SUSPENSION

B.1. The suspension of Respondent Kearns' Wisconsin nursing license shall not be stayed for the first three (3) months, but anytime after three (3) months, the suspension shall be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three (3) months.

B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent Kearns is in substantial or repeated violation of any provision of Sections C or D of this Order. Repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Board may, in conjunction with any removal of any stay, prohibit Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.

B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent Kearns either by:

- (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or
- (b) Actual notice to Respondent.

B.4. The Board or its designee may reinstate the stay if provided with sufficient information that Respondent Kearns is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.

B.5. If Respondent Kearns requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. RL 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

C.1. Respondent Kearns shall enter into, and shall continue, drug and alcohol treatment with a treater acceptable to the Board or its designee ("Treater").

C.2. Respondent Kearns shall participate in, cooperate with, and follow all treatment recommended by the Treater.

C.3. Respondent Kearns shall immediately provide the Treater with a copy of this Final Decision and Order and all other subsequent orders.

C.4. The Treater shall be responsible for coordinating Respondent Kearns' rehabilitation, drug monitoring and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If the Treater is unable or unwilling to serve as required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.

C.5 The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by the Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by D.4, below.

C.6. The Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent Kearns' progress in the drug treatment program. The Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

C.7. Respondent Kearns shall provide and keep on file with the Treater, all treatment facilities and personnel, laboratories, and collection sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

NA Meetings

C.8 Respondent Kearns shall attend Narcotics Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by the Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported quarterly to the Treater and the Department Monitor.

Sobriety

C.9. Respondent Kearns shall abstain from all personal use of alcohol and of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent Kearns shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent Kearns shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to the Treater and the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.

C.10. Respondent Kearns shall abstain from all use of over-the-counter medications or other substances which may mask consumption of controlled substances, create false positive screening results, or interfere with Respondent's treatment and rehabilitation.

C.11. Respondent Kearns shall report all medications and drugs, over-the-counter or prescription, taken by Respondent to the Treater and the Department Monitor within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.

Drug and Alcohol Screens

C.12. Respondent Kearns shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Adm. Code § RL 7.11 ("Approved Program").

C.13. At the time Respondent Kearns enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:

- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
- (b.) Production of a urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.

C.14. The Approved Program shall require the testing of specimens at a frequency of not less than forty-eight (48) times per year, for the first year of this Order. After the first year, the frequency may be reduced only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.

C.15. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances, Respondent Kearns shall promptly submit to additional tests or examinations as the Treater or the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.

C.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent Kearns to do any or all of the following: (a) submit additional specimens, (b) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.

C.17. All confirmed positive test results shall be presumed to be valid. Respondent Kearns must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.

C.18. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

C.19. Respondent Kearns shall not work as a nurse or other health care provider in a setting in which Respondent has direct access to controlled substances.

C.20. Respondent Kearns shall practice only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee and only in a work setting pre-approved by the Board or its designee. Respondent may not work in a home health care, hospice, pool nursing, or agency setting.

C.21. Respondent Kearns shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a nurse or care giver or provides health care, currently or in the future.

C.22. It is Respondent Kearns' responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active nursing practice worked during that quarter.

C.23. Respondent Kearns shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

MISCELLANEOUS

Department Monitor

D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

**Department Monitor
Wisconsin Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817**

Required Reporting by Respondent

D.2. Respondent Kearns is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent. Additionally, every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by Board

D.3. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent Kearns continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

D.4. Respondent Kearns may petition the Board on an annual basis for modification of the terms of this Order or termination, however no such petition for modification shall occur earlier than one (1) year from the date of this Order. Any such petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

D.5 Respondent Kearns may petition the Board for termination of this order anytime after five years from the date of this Order. However, no petition for termination shall be considered without a showing of continuous, successful compliance with the terms of the Order, for at least five (5) years.

Costs of Compliance

D.6. Respondent Kearns shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Costs of Proceeding

D.7. Respondent Kearns 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**


within one hundred eighty (180) days of this Order. In the event Respondent fails to timely submit any payment of costs, the Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

D.8. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 441.07.

Dated at Madison, Wisconsin on August 27, 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