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Before The
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against **KEITH M. DANIELS, R.N.**, Respondent

FINAL DECISION AND ORDER

ORDER 0000767

The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Second Amended 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 24th day of March, 2011.

A handwritten signature in cursive script, likely belonging to a member of the Board of Nursing.

Member
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **KEITH M. DANIELS, R.N.**, Respondent

SECOND AMENDED
PROPOSED DECISION
DHA Case No. DRL-09-0129

Division of Enforcement Case No. 09 NUR 292

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

Keith M. Daniels, R.N.
302 N. Green Bay Road, #411
Waukegan, IL 60085

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, Keith Daniels. The Division filed said Complaint with the Division of Hearings and Appeals on December 16, 2009. The Division also sent a copy of the Complaint and a Notice of Hearing to Respondent Daniels at his most recent address on file with the Department of Regulation and Licensing; 302 North Green Bay Road, # 411, Waukegan, IL, 60085. The Notice of Hearing stated that Respondent Daniels was required to file a written Answer to the Complaint within 20 days, failing which "[he would] be found to be in default and a default judgment [could] be entered against [him] on the basis of the Complaint and other evidence and the Wisconsin Board of Nursing [could] take disciplinary action against [him] and impose the costs of the investigation, prosecution and decision of this matter upon [him] without further notice or hearing."

To date, no Answer has been filed.

On January 11, 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 Daniels and Attorney Arthur Thexton of the Division of Enforcement for February 23, 2010. This Notice instructed Respondent Daniels to contact the undersigned ALJ to provide the telephone number for which he could be reached for the March 8, 2010 telephone conference, and was sent to the address on file for Respondent Daniels, as provided above.

Respondent Daniels did not contact the undersigned ALJ with a telephone number that he could be reached at for the February 23, 2010 telephone conference.

On or about January 14, 2010, the Division, by Attorney Arthur Thexton, filed a Notice and Motion for Default Order and asked that it be considered at the February 23, 2010 prehearing conference. The undersigned ALJ granted this request.

Prior to this date, on January 7, 2010, Attorney Thexton advised the undersigned ALJ that the Division had the following telephone number on file for Respondent Daniels: 847-672-9617. The undersigned ALJ used this number to call Respondent Daniels at the February 23, 2010 telephone conference, and succeeded in contacting him. Upon questioning by the ALJ, Respondent Daniels confirmed that the address that the Division had on file for him was correct and admitted that he had received both the Notice of Hearing and Complaint and the Notice of Prehearing Conference. He stated that he did not respond to these documents because "he did not know what to do with them." He affirmed that he wished to participate in the disciplinary proceedings against him, and then admitted that he had consumed marijuana, which formed the basis of the Complaint against him.

Attorney Thexton was asked whether he wished to redact his Motion for Default. He responded no, explaining that because Respondent Daniels had stipulated to the Complaint against him, his recommendation as to discipline would be the same whether obtained by stipulation or by default motion: a reprimand and drug testing. He e-mailed the undersigned ALJ a sample stipulation to confirm this (see attached).

In the interest of efficiency – and because the ALJ did not find the respondent's statement that he did not know how to respond to the Notice of Hearing and Complaint or the Notice of Telephone Prehearing Conference credible, the undersigned ALJ granted the Division's Default Motion. However, she did not immediately issue this decision, as Attorney Thexton agreed to send Respondent Daniels the above-referenced stipulation in an effort to avoid a default decision.

On March 26, after 30 days had passed without a signed stipulation from Respondent Daniels, the undersigned ALJ sent and issued a Notice of Default instructing the respondent that he 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 Thexton to

provide the undersigned ALJ with the Division's written recommendations for discipline and the assessment of costs in this matter by April 5, 2010. It was mailed to Respondent Daniels at the address he confirmed was his, 302 North Green Bay Road, #41, Waukegan, IL, 60085. Attorney Thexton provided the undersigned ALJ with the Division's written recommendations as to discipline and costs on or about April 7, 2010.

Respondent Daniels has failed to respond to either the Notice of Default issued against him, or the written recommendations provided by Attorney Thexton on April 7, 2010.

FINDINGS OF FACT

1. Keith M. Daniels (D.O.B. 8/14/57) is duly licensed in the state of Wisconsin as a professional nurse (license # 147173). This license was first granted on 4/28/04. Respondent is also licensed in Illinois, and has been so licensed since 1982.

2. On 7/20/09, Respondent submitted a sample of his urine for a pre-employment examination for a position as a nurse. The sample was positive for tetrahydrocannabinol, the active ingredient in marijuana, a Schedule I controlled substance. Respondent was offered the opportunity to explain this test result, and has not offered an explanation of any legal cause for this test result. The Board infers that Respondent has consumed marijuana, a Schedule I controlled substance, or Marinol®, a Schedule III controlled substance, without legal authority.

CONCLUSION OF LAW

By the conduct described above, respondent is subject to disciplinary action against his license to practice as a registered nurse in the state of Wisconsin, pursuant to Wis. Stat. § 441.07(1)(b) and (d), and Wis. Admin. Code § N 7.04(1), (2), and (15).

COSTS

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 of the same reasons as cited in the *Buenzli-Fritz* decision, Respondent Daniels should be assessed the full amount of recoverable costs. Respondent Daniels prolonged the disciplinary process by failing to sign a stipulation he agreed to, 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 Daniels on Respondent Daniels 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

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Keith M. Daniels, R.N, is REPRIMANDED for his unprofessional conduct in this matter.
2. Respondent shall, upon request of the Board or its designee, or any agent of the Board or its designee (which may include a law enforcement officer) provide a sample of her breath, blood, urine, saliva, or hair for testing. This provision shall not be deemed a limitation on Respondent's license, but violation shall be subject to action pursuant to par. 3, below.
3. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions


and limitations or other additional discipline for a violation of any of the terms of this Order.

IT IS FURTHER ORDERED that respondent shall pay the **full** costs of investigating and prosecuting this matter, **in an amount to be established pursuant to Wis. Admin. Code § RL 2.18.**, within 60 days of this Order. If not paid, Respondent's license shall be SUSPENDED without further notice or hearing, until they are paid in full, together with any accrued interest.

Dated at Madison, Wisconsin on January 26, 2011.

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