

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov



Before The
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against LEIA M. LUEPNITZ, L.P.N.,
Respondent

FINAL DECISION AND ORDER

ORDER 0000769

Division of Enforcement Case Nos. 08 NUR 404, 10 NUR ²⁵⁶~~245~~, 10 NUR 257

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 24th day of March, 2011.

Member
Board of Nursing



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

**In the Matter of the Disciplinary Proceedings Against
LEIA M. LUEPNITZ, L.P.N., Respondent**

**PROPOSED DECISION AND ORDER
DHA Case No. DRL-10-0069**

256
~~245~~

Division of Enforcement Case Nos. 08 NUR 404, 10 NUR ~~245~~, 10 NUR 257

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

Leia M. Luepnitz
1111 Dousman Street
Green Bay, WI 54303

Wisconsin Board of Nursing
P. O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing, Division of Enforcement, by

Attorney Jeanette Lytle
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, Leia M. Luepnitz. The Division filed said Complaint with the Division of Hearings and Appeals on October 12, 2010. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing to Respondent Luepnitz at her most recent address on file with the Department of Regulation and Licensing; 1111 Dousman Street, Green Bay, Wisconsin, 54303. The Notice of Hearing stated that Respondent Luepnitz 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 November 10, 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 Luepnitz and Attorney Jeanette Lytle of the Division of Enforcement for November 22, 2010. This Notice instructed Respondent Luepnitz to contact the undersigned ALJ to provide the telephone number for which she could be reached for the November 22, 2010, telephone conference, and was sent to the address on file for Respondent Luepnitz, as provided above.

At the November 22, 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 Luepnitz 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 December 3, 2010. It was mailed to Respondent Luepnitz at the last address on record for her, 1111 Dousman Street, Green Bay, Wisconsin, 54303. Attorney Lytle provided the undersigned ALJ with the Division's written recommendations as to discipline and costs on or about December 3, 2010.

Respondent Luepnitz has failed to respond to either the Notice of Default issued against her, or the written recommendations provided by Attorney Lytle on December 3, 2010.

FINDINGS OF FACT

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

1. Leia M. Luepnitz, L.P.N., (DOB 12/20/1981) is duly licensed as a practical nurse in the State of Wisconsin (license # 31-307200). This license was first granted on May 12, 2006.
2. Respondent Luepnitz's most recent address on file with the Wisconsin Board of Nursing is 1111 Dousman Street, Green Bay, Wisconsin, 54303.
3. In or about March of 2006, while employed at a nursing home in Michigan, it was determined that Respondent Luepnitz falsely documented administering hydrocodone to three residents. Respondent Luepnitz admitted to diverting five hydrocodone tablets, claiming she had given them to a friend. The Michigan Board of Nursing suspended Respondent's license on February 4, 2007.
4. While the Michigan action was pending, Respondent Luepnitz applied for a Wisconsin license. She received her Wisconsin license on May 12, 2006. Respondent did not renew her Michigan license when it expired on March 31, 2007.

5. On or about November 8, 2008, on Respondent Luepnitz's second day of work at a Wisconsin nursing home, a delivery of hydrocodone and lorazepam went missing. Six staff were determined to have had access to the drugs, including Respondent Luepnitz. All other staff tested negative for drugs. Respondent Luepnitz had difficulty producing a urine sample, produced a sample of insufficient size, produced a sample that did not register a temperature, and finally produced a sample that was positive for Tramadol.¹ Respondent Luepnitz did not have a prescription for Tramadol.

6. On or about June 6, 2010, Respondent Luepnitz was working as a home health care nurse. Her patient reported to the home health agency that after Respondent Luepnitz's visit, a pair of shoes was missing. Several days later, Respondent Luepnitz was seen by another nurse wearing shoes that looked identical to the shoes missing from the patient.

7. On or about June 7, 2010, Respondent Luepnitz was working as a home health care nurse. Her patient, a CBRF² resident, had increased pain, so Respondent Luepnitz arranged to discontinue the patient's Lortab³ and start the patient on Roxanol. Respondent then took the Lortab and left the facility. She later claimed to destroy the Lortab, without a witness. The policy was to destroy medications at the facility, with a witness.

8. As set out in the Procedural History above, a Complaint and Notice of Hearing were sent to Respondent Luepnitz at her most recent address on file with the Department of Regulation and Licensing/Wisconsin Board of Nursing on or about October 12, 2010.

9. On or about November 10, 2010, the undersigned ALJ sent a Notice of Telephone Prehearing Conference for November 22, 2010, to Respondent Luepnitz at the above-referenced address.

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

11. On or about November 22, 2010, the undersigned ALJ sent a Notice of Default to Respondent Luepnitz at her last known address.

12. Respondent Luepnitz has not responded to this Notice, or otherwise to the Complaint against her.

¹ It is unclear from the Complaint whether Tramadol is a form of either hydrocodone or lorazepam. An internet search revealed that Tramadol is opiod (narcotic) analgesic pain reliever.

² The undersigned administrative law judge understands these initials to stand for "community based residential facility," as defined in Wis. Stat. § 50.01(19).

³ An internet search revealed that Lortab is a form of hydrocodone.

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 Luepnitz 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 Luepnitz’s responsibility to keep her address on record with the Department of Regulation and Licensing current. Wis. Stat. § 440.11(1).
5. Respondent Luepnitz 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 Luepnitz 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. Wisconsin Admin. Code § N 704(1) defines “misconduct or unprofessional conduct” to include: “Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing.”
9. Wisconsin 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. Wisconsin Admin. Code § N 704(7) further defines "misconduct or unprofessional conduct" to include: "Having disciplinary action through final board adjudication taken against one's license in another jurisdiction."

11. Wisconsin Admin. Code § N 704(12) further defines "misconduct or unprofessional conduct" to include: "Obtaining or attempting to obtain anything of value from a patient without the patient's consent."

12. Pursuant to Wis. Stat. § 441.07(c), 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 "Acts 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."

13. Wisconsin Admin. Code § N 703(1) defines "negligence" to include: "a substantial departure from the standard of care ordinarily exercised by a competent licensee."

14. Respondent Luepnitz's conduct, as described in Findings of Fact ¶ 3, above, constitutes a violation of Wis. Admin. Code §§ N. 7.04(1), (2) and (7), and subjects her to discipline pursuant to Wis. Stat. § 441.07(1)(d).

15. Respondent Luepnitz's conduct, as described in Findings of Fact ¶ 5, above, constitutes a violation of Wis. Admin. Code §§ N. 7.04(1) and (2), and subjects her to discipline pursuant to Wis. Stat. § 441.07(d).

16. Respondent Luepnitz's conduct, as described in Findings of Fact ¶ 6, above, constitutes a violation of Wis. Admin. Code §§ N. 7.04(1) and (12), and subjects her to discipline pursuant to Wis. Stat. § 441.07(d).

17. Respondent Luepnitz's conduct, as described in Findings of Fact ¶ 7, above, constitutes a violation of Wis. Admin. Code §§ N. 7.04(1), (2), and N. 7.03(1), and subjects her to discipline pursuant to Wis. Stat. § 441.07(c) and (d).

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against her, Respondent Luepnitz has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that Respondent Luepnitz: (1) falsely documented administering hydrocodone and diverted at least five hydrocodone tablets while employed at a nursing home in Michigan; (2) had her license suspended by the Michigan Board of Nursing for this conduct on February 4, 2007;

(3) tested positive for Tramadol, (a narcotic she did not have a prescription for), on her second day of work at a nursing home in Wisconsin, after a delivery of hydrocodone and lorazepam went missing; (4) was noted to be wearing a pair of shoes identical to a pair that had gone missing from one of her patients a few days earlier; and (5) diverted a patient's remaining Lortab from the patient's "CBRF" after arranging to discontinue this medication for said patient and start the patient on Roxanol, instead of wasting it at the facility, per "policy." Such conduct clearly violates (1) Wis. Admin. Code § N. 7.04(1), which includes as misconduct the "[v]iolating, or aiding and abetting [of] a violation of any law substantially related to the practice of professional nursing⁴; (2) Wis. Admin. Code § N. 7.04(2), which includes as misconduct the "...obtaining [of] any drug other than in the course of legitimate practice or as otherwise prohibited by law," (3) § N. 7.04(7), which includes as misconduct "[h]aving disciplinary action taken through final board adjudication against one's license in another jurisdiction," and (4) § N. 7.04(12), which includes as misconduct the "[o]btaining or attempting to obtain anything of value from a patient without the patient's consent." Respondent Luepnitz is thus subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

What is less clear is whether her conduct additionally violates Wis. Admin. Code § N. 7.03(1)(negligence), subjecting her to discipline pursuant to Wis. Stat. § 441.07(c). The Division alleges that Respondent Luepnitz violated these provisions when she took the Lortab she discontinued for a patient from the patient's CBRF facility, instead of destroying the Lortab at the facility in the presence of a witness – against "policy."

Wisconsin Admin. Code § N. 7.03(1) defines negligence as "a substantial departure from the standard of care ordinarily exercised by a competent licensee." While the respondent's actions in diverting Lortab from a CBRF, for what can only be presumed to be her own personal use, are beyond "negligent," and the Division does not explain with specificity what standard of patient care the respondent violated by her actions, the fact remains that arranging a switch in a patient's pain medications, and then diverting the discontinued medication, presumably for oneself, is a substantial departure from ordinary care, and was further against the "policy" of destroying discontinued medications at the facility, with a witness. Discipline pursuant to Wis. Stat. § 441.07(c) is thus warranted.

The only question that remains is what kind of discipline is appropriate for Respondent Luepnitz's numerous violations.

Appropriate Discipline

The Division requests that Respondent Luepnitz' license to practice nursing be revoked. In support of this recommendation, the Division asserts that:

⁴ Though the Division does not cite the specific statute and/or ordinance that Respondent Luepnitz's conduct, as described in Findings of Fact ¶¶ 3-7, violates, (and the undersigned ALJ does not interpret Wis. Admin. Code § N.7.04(1) to apply to Administrative Code provisions), it can be reasonably assumed that the respondent's conduct in diverting and consuming narcotics while at work, and stealing from a patient, violates "laws" substantially related to the practice of nursing.

Ms. Luepnitz did not answer the Complaint or otherwise appear in these proceedings. Although the Board often allows nurses to work under a stayed suspension in diversion cases while receiving AODA treatment, Ms. Luepnitz is clearly not ready to obtain treatment or comply with any kind of testing regime, as she was offered [that] option by stipulation, and did not respond.

Wis. Stat. §441.07(2) provides that after one year, the board may reinstate the revoked license. In the event Ms. Luepnitz becomes able to deal with her AODA issues, she can reapply for licensure after a year. This discipline will be on record, so the board will have the option of offering her a limited license with drug testing at that time.

The undersigned ALJ agrees with the Division's logic, and finds that Luepnitz's conduct warrants the revocation of her license.

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 Luepnitz's conduct in (1) diverting narcotic medications from numerous facilities – and patients – between 2006 and 2010, and (2) testing positive for Tramadol while at work evinces that she has not yet been rehabilitated, and that she is still very much a danger to patients. Her inability to participate in these proceedings only strengthens that 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 Luepnitz 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 Luepnitz 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 Luepnitz on Respondent Luepnitz, 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 Leia M. Luepnitz, L.P.N. to practice nursing in the State of Wisconsin be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent Luepnitz's privilege to practice in Wisconsin pursuant to the Multi-state Nurse Licensure Compact be and is hereby **REVOKED**.

Pursuant to Wis. Stat. 441.07(2), the board in its discretion may reinstate a revoked license no earlier than one year following revocation, upon receipt of an application for reinstatement.

IT IS FURTHER ORDERED that Respondent Luepnitz 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**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Leia M. Luepnitz.

Dated at Madison, Wisconsin on January 11, 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

G:\DOCS\DR\Decision\LuepnitzLeiaPropDec.sst.doc

Rohland, Steve - DRL

From: Rohland, Steve - DRL
Sent: Friday, April 08, 2011 9:30 AM
To: Busse, Shari E - DHS
Subject: Leia M. Luepnitz, LPN
Attachments: ORDER0000769-00005859.pdf

Ms. Busse – you were the complainant in these case files, your file reference numbers CR 08-247; CR 10-148, and CR 10-149. On 03/24/11 the Board of Nursing formally closed these case files with a licensure revocation; a copy of the Final Decision & Order is attached.

Thank you,

Steven Rohland, Investigator
Dept. of Regulation & Licensing