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Before The
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings Against
KAREN E. WEST, L.P.N., Respondent

FINAL DECISION AND ORDER

ORDER 0000771

Division of Enforcement Case No. 09 NUR 439

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
KAREN E. WEST, L.P.N., Respondent

NOTICE OF PROPOSED DECISION
AND ORDER
DHA Case No. DRL-10-0071

Division of Enforcement Case No. 09 NUR 439

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

Karen E. West
128 West Geneva Street
Williams Bay, WI 53191

Karen E. West
601 North Wisconsin Street
Elkhorn, WI 53121

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
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, Karen West. The Division filed said Complaint with the Division of Hearings and Appeals on October 15, 2010. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing via regular mail to Respondent West at her most recent address on file with the Department of Regulation and Licensing; 601 N. Wisconsin Street, Elkhorn, Wisconsin, 53121. It further sent a copy of said documents via certified mail to the address it believed to be Respondent West's current

address; 128 W. Geneva Street, Williams Bay, Wisconsin, 53191. The Notice of Hearing stated that Respondent West 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.”

On November 3, 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 West and Attorney Jeanette Lytle of the Division of Enforcement for November 17, 2010. This Notice instructed Respondent West to contact the undersigned ALJ to provide the telephone number for which she could be reached for the November 17, 2010, telephone conference, and was sent to the address on file for Respondent West, as provided above. It was further sent to 128 W. Geneva Street, Williams Bay, Wisconsin, 53191.

Respondent West did not contact the undersigned ALJ with a telephone number that she could be reached at for the November 17, 2010, telephone conference, and the telephone conference that was conducted on that date was without the respondent’s participation.

At the November 17, 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 West 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 West at the last address on record for her, 601 N. Wisconsin Street, Elkhorn, Wisconsin, 53121. It was further mailed to her at 128 W. Geneva Street, Williams Bay, Wisconsin, 53191. Attorney Lytle provided the undersigned ALJ with the Division’s written recommendations as to discipline and costs on or about November 22, 2010.

Respondent West has failed to respond to either the Notice of Default issued against her, or the written recommendations provided by Attorney Lytle on November 22, 2010.

FINDINGS OF FACT

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

1. Karen E. West, L.P.N., (DOB 09/12/1963) is duly licensed as a practical nurse in the State of Wisconsin (license # 31-34491). This license was first granted on November 26, 1997.

2. Respondent West's most recent address on file with the Wisconsin Board of Nursing is 601 N. Wisconsin Street, Elkhorn WI, 53121. Upon information and belief, Respondent West currently resides at 128 W. Geneva Street, Williams Bay, Wisconsin, 53191.

3. At all times relevant to this action, Respondent West was working for Willowfield Nursing and Rehabilitation Center in Delavan, Wisconsin.

4. On January 22, 2009, Respondent West was questioned by a detective for the City of Delavan Police Department after an incident involving missing Oxycontin from her place of employment. While being questioned by the detective, Respondent admitted that, on several occasions, she and a coworker failed to destroy some of the medication and instead stole the medication. The medications taken consisted of Percocet, oxycodone and Vicodin. Respondent also confessed that she would later consume the medication which she took from the nursing home.

5. On or about August 20, 2010, the Department of Regulation and Licensing received a letter dated August 17, 2010, from Respondent West stating that she was no longer working in the nursing profession and requested that her LPN license be permanently cancelled.

6. As set out in the Procedural History above, a Complaint and Notice of Hearing were sent to Respondent West at her most recent address on file with the Department of Regulation and Licensing/Wisconsin Board of Nursing, (601 N. Wisconsin Street, Elkhorn, Wisconsin, 53121), on or about October 15, 2010. It further sent a copy of these documents to the address it believed to be Respondent West's current address, (128 W. Geneva Street, Williams Bay, Wisconsin, 53191), on this same date.

7. On or about November 3, 2010, the undersigned ALJ sent a Notice of Telephone Prehearing Conference for November 17, 2010, to Respondent West at the above-listed addresses.

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

9. On or about November 17, 2010, the undersigned ALJ sent a Notice of Default to Respondent West at her last known address.

10. Respondent West has not responded to this Notice, or otherwise to the Complaint 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. 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 West 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 West’s responsibility to keep her address on record with the Department of Regulation and Licensing current. Wis. Stat. § 440.11(1).

5. Respondent West 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 West 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(1) further 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.”

10. 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.”

11. Respondent West’s conduct, as described in Findings of Fact ¶ 4, constitutes misconduct or unprofessional conduct contrary to Wis. Stat. § 441.07(1)(d), and Wis. Admin. Code §§ N 7.04, N. 7.04(1) and 7.04(2). Thus, she is subject to discipline pursuant to 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 West has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that Respondent West: (1) diverted narcotic medications from her place of employment, which she later consumed; and (2) after admitting that she did this, requested that her LPN license be permanently cancelled. The former conduct clearly violates Wis. Admin. Code §§ N. 7.04, N. 7.04(1)¹, and N. 7.04(2), which includes as misconduct the “[a]dministering, supplying or obtaining [of] any drug other than in the course of legitimate practice or as otherwise prohibited by law.” Respondent West 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 West’s request for revocation of her LPN license be granted. In support of this recommendation, it argues that:

Although under the facts of this case, the Board typically allows nurses to continue to work under a stayed suspension while receiving treatment, in this case the Respondent was offered and has rejected that option. Wis. Stat. § 441.07(2) provides that after one year, the board may reinstate the revoked license, so in the event Ms. West has a change of heart, 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.

(Division’s November 22, 2010 Written Recommendations For Discipline and the Imposition of Costs).

Under the circumstances of this case, the undersigned ALJ believes the discipline recommended by the Division is appropriate.

Indeed, two of the three purposes of discipline are (1) to promote the rehabilitation of the licensee, and (2) to protect the public from other instances of misconduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976).² If Respondent West does not believe she should continue to work in the nursing profession, the undersigned ALJ will not question her decision. And if Respondent West should change her mind in the future, she will have the opportunity to reapply after one year’s time.

Costs

¹ Though the Division does not cite the specific statute and/or ordinance that Respondent West’s conduct 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 diverting narcotics from a care center violates “the law.”

² The third purpose of discipline is to deter other licensees from engaging in similar contact.

The Division requests that Respondent West 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 of the same reasons as cited in the *Buenzli-Fritz* decision, Respondent West 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 – indeed, the respondent admitted her wrongdoing – and given the program revenue nature of the Department of Regulation and Licensing, fairness again dictates imposing the costs of disciplining Respondent West on Respondent West, 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

For the reasons set forth above, IT IS ORDERED that the license of the Respondent Karen E. West, L.P.N. to practice nursing in the State of Wisconsin be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent West'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.

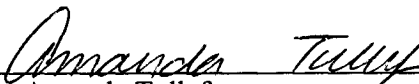
IT IS FURTHER ORDERED that Respondent West shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. After the amount is established payment shall be made by certified check or money order payable to the Wisconsin Department of Regulation and 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 Karen E. West.

Dated at Madison, Wisconsin on January 4, 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