

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The  
State Of Wisconsin  
BOARD OF NURSING

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In the Matter of the Disciplinary Proceedings  
Against JAMIE ZAKARAS, R.N., Respondent

FINAL DECISION AND ORDER

Order No. \_\_\_\_\_  
**ORDER 0000968**

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Division of Enforcement Case Nos. 10 NUR 447 and 10 NUR 558

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 21<sup>st</sup> day of July, 2011.

  
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Member  
Board of Nursing



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

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In the Matter of the Disciplinary Proceedings  
Against **JAMIE ZAKARAS, R.N.**, Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. DRL-11-0020

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Division of Enforcement Case Nos. 10 NUR 447, 10 NUR 558

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

Jamie Zakaras  
911 B Fraser Lane  
Hudson, WI 54016

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, Jamie A. Zakaras. The Division filed said Complaint with the Division of Hearings and Appeals on February 7, 2011. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing via regular mail to Respondent Zakaras at her most recent address on file with the Department of Regulation and Licensing; 911 B Fraser Lane, Hudson, WI 54016. The Notice of Hearing stated that Respondent Zakaras 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 February 22, 2011, 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 Zakaras and Attorney Jeanette Lytle of the Division of Enforcement for March 10, 2011. This Notice instructed Respondent Zakaras to contact the undersigned ALJ to provide the telephone number for which she could be reached for the March 10, 2011, telephone conference, and was sent to the address on file for Respondent Zakaras, as provided above.

Respondent Zakaras did not contact the undersigned ALJ with a telephone number that she could be reached at for the March 10, 2011, telephone conference, and the telephone conference that was conducted on that date was without the respondent’s participation.

At the March 10, 2011, 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 Zakaras 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 April 8, 2011. It was mailed to Respondent Zakaras at the last address on record for her, 911 B Fraser Lane, Hudson, WI 54016. Attorney Lytle provided the undersigned ALJ with the Division’s written recommendations as to discipline and costs on or about April 8, 2011.

Respondent Zakaras has failed to respond to either the Notice of Default issued against her, or the written recommendations provided by Attorney Lytle on April 8, 2011.

### **FINDINGS OF FACT**

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

1. Jamie A. Zakaras, R.N., Respondent, Date of Birth June 12, 1977, is and was at all times relevant to the facts set forth herein a registered nurse licensed in the State of Wisconsin pursuant to license number 30-161138. This license was first granted on January 2, 2008.
2. Respondent’s most recent address on file with the Wisconsin Board of Nursing is 911 B Fraser Lane, Hudson, WI 54016.

3. One June 3, 2010, the Minnesota Board of Nursing suspended Respondent's license to practice as a registered nurse. The factual basis of the suspension was as follows:

- a) In September 2007, Respondent's employment as a registered nurse at a hospital in St. Paul Minnesota was involuntarily terminated for a violation of confidentiality policies. Respondent uploaded a patient's x-ray to her MySpace page.
- b) In July 2008, Respondent's employment with an agency in Bloomington, Minnesota was involuntarily terminated because while on assignment at a hospital in River Falls, Wisconsin, Respondent used language that was offensive to a patient and failed to document administration of narcotics appropriately.
- c) On February 9, 2009, Respondent was admitted to an emergency department for abdominal pain. She received a drug screen, which tested positive for cocaine and opiates. Respondent admitted to using cocaine and Vicodin.
- d) On March 4, 2009, Respondent completed an intake interview for the Minnesota Health Professional Services Program ("HPSP"), which is a confidential monitoring program for professionals with illnesses including those involving alcohol and drugs. On March 30, 2009, the HPSP discharged Respondent for failing to return her enrollment materials.
- e) On April 9, 2009, Respondent's employment as a registered nurse at a hospital in St. Paul, Minnesota was involuntarily terminated for failure to follow narcotic administration policies. Respondent had numerous narcotics discrepancies, including inconsistent times of administration and failure to document wastes of hydromorphone<sup>1</sup>, morphine<sup>2</sup>, and Ativan<sup>3</sup>. On one occasion, Respondent exhibited slurred speech.
- f) On June 29, 2009, while employed with an agency in St. Paul, Minnesota, Respondent received a warning for unprofessional conduct and potential impairment while on assignment at a facility in Minneapolis, Minnesota. Respondent was observed as disorganized with rambling speech, pale, sweating, and at times, her whereabouts were unknown to her coworkers. When Respondent went outside to smoke, a coworker noticed she had a vial of Dilaudid<sup>4</sup> in her pocket, which Respondent said she had withdrawn

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<sup>1</sup> A schedule II narcotic.

<sup>2</sup> A schedule II narcotic.

<sup>3</sup> An internet search revealed that Ativan is a brand name for Lorazepam, a schedule IV drug.

<sup>4</sup> An internet search revealed that Dilaudid is a brand name for hydromorphone, a schedule II narcotic.

for a patient. However, the patient already had a full vial in the patient controlled analgesia (“PCA”) device.

- g) On November 9, 2009, Respondent’s employment as a registered nurse at a facility in Hastings, Minnesota was involuntarily terminated for narcotic administration and documentations discrepancies. Between September 1, 2009, and October 31, 2009, Respondent documented administering or wasting less than the total amounts of Dilaudid she had withdrawn on 13 occasions, resulting in over ten milligrams of Dilaudid not accounted for. Respondent was referred to the employee assistance program, and her employment was involuntarily terminated.
- h) On November 19, 2009, Respondent entered outpatient chemical dependency treatment and was diagnosed with alcohol dependence. Respondent completed treatment on January 25, 2010, and was referred to aftercare.
- i) On December 2, 2009, while employed as a registered nurse with the agency in St. Paul, Minnesota, and on assignment at a hospital in Edina, Minnesota, the following occurred:
  - 1) While giving report for oncoming staff, Respondent’s eyes were red and glossy, and she appeared anxious. Respondent told oncoming staff she had not completed documentation and would need an extra 15 minutes to complete it. Respondent went to an empty room purportedly to chart, but the director of nursing checked on her twice and Respondent had not charted anything. Respondent demonstrated additional signs of impairment, so the director of nursing determined Respondent was not safe to drive. Respondent was taken to the emergency room department for a drug screen, the results of which were never conveyed to the employer.
  - 2) A review of Respondent’s documentation doe for the shift revealed multiple narcotic administration and documentation discrepancies, including activating an order for Dilaudid for a patient without a physician’s authorization, and withdrawing one syringe of Dilaudid and documenting two separate doses administered from the syringe, the first of which was documented as administered prior to the time it was withdrawn and administered. In addition, two PCA cartridges of Dilaudid that Respondent had withdrawn and then returned were sent for testing based on suspicion of tampering because the patient

Respondent withdrew the cartridges for was not on a PCA device. The test results indicated the Dilaudid concentration for the cartridges were less than half of what was expected.

j) During conferences with the Minnesota Review Board, Respondent provided the following information:

- 1) Respondent admitted she uploaded the x-ray to her MySpace page, and said it was bad judgment to do so.
- 2) Respondent acknowledged practice deficiencies, including mismanagement of narcotics, specifically Dilaudid, but denied she diverted narcotics from her employer or tampered with the PCA cartridges.
- 3) Respondent admitted she used cocaine on one occasion and took Vicodin for reasons other than prescribed.
- 4) Respondent said her sobriety date is November 2, 2009, and she is scheduled to complete chemical dependency aftercare in June 2010. She attends AA and therapy and at least weekly, is searching for a sponsor, and has a sober network of friends and family.
- 5) Respondent has depression, anxiety, and panic attacks, all of which are under control with medication.
- 6) Respondent acknowledged her alcohol dependency and mental health diagnosis contributed to her practice deficiencies.

#### **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 Zakaras 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 Zakaras’ responsibility to keep her address on record with the Department of Regulation and Licensing current. Wis. Stat. § 440.11(1).

5. Respondent Zakaras 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 Zakaras has admitted to the allegations of the Complaint by default by not filing an Answer.

7. Pursuant to Wis. Stat. § 441.07(1)(c), the Board of Nursing has authority to “revoke, limit, suspend or deny renewal of a license of a registered nurse... or may reprimand a registered nurse...,” if the board finds that the registered nurse has engaged in “acts which show the registered nurse... to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.”

8. Wis. Admin. Code § 7.03(2) defines “abuse of alcohol or other drugs” as “the use of alcohol or any drug to an extent that such use impairs the ability of the licensee to safely or reliably practice.”

9. Pursuant to Wis. Stat. § 441.07(1)(d), the Board of Nursing further has the 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.”

10. 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.”

11. 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.”

12. Wis. 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.”



13. Respondent Zakaras' conduct, as described ¶ 3 of the Findings of Fact, constitutes abuse of alcohol and other drugs, contrary to Wis. Admin. Code § N 7.03(2), and also misconduct or unprofessional conduct, contrary to Wis. Admin. Code §§ N 7.04, N. 7.04(1) and 7.04(2). She is thus subject to discipline pursuant to Wis. Stat. §§ 441.07(1)(c) and (d).

## **DISCUSSION**

### **Violations of Wisconsin Statute and Administrative Code**

By failing to provide an Answer to the Complaint filed against her, Respondent Zakaras has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that Respondent Zakaras: (1) uploaded a patient's x-ray to her MySpace page; (2) used offensive language with a patient; (3) failed to appropriately document and/or administer narcotics administration at at least four places of employment, three of which she was thereafter terminated from; (4) tested positive for, (and admitted using), cocaine and Vicodin during this timeframe; (5) failed to follow through with a confidential alcohol and drug monitoring program after having take steps to enroll in it; (6) exhibited signs of impairment, including disorganization, slurred and rambling speech, a pale and sweaty appearance and red, glossy eyes at three places of employment; (7) went missing for periods of time at at least one place of employment; (8) diverted a vial of Dilaudid from at least one place of employment; (9) entered treatment for chemical dependency and was diagnosed with alcohol dependence; (10) continued to have display narcotic documentation and administration issues, and signs of impairment while in treatment; and (11) was disciplined by the Minnesota Board of Nursing for her afore-mentioned conduct.

Respondent Zakaras' conduct clearly violates Wis. Admin. Code § N. 7.03(2) (pertaining to abuse of alcohol and other drugs), and §§N. 7.04(2), and N. 7.04(7) (pertaining to unprofessional conduct). (See Conclusions of Law ¶¶ 8, 11 and 12, above). As such, she subject to discipline pursuant to Wis. Stat. § 441.07(1)(c) and (d). (See Conclusions of Law ¶¶ 7 and 9). The only question that remains is what kind of discipline is appropriate.

### **Appropriate Discipline**

As discipline for her above conduct, the Division recommends that the Board revoke Respondent Zakaras' license to practice nursing in the state of Wisconsin. In support of this recommendation, it argues that:

Ms. Zakaras 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. Zakaras 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.

(Division's April 8, 2010 Written Recommendations for Discipline and the Imposition of Costs).

The Division notes that:

Wis. Stat. § 441.07(2) provides that after one year, the board may reinstate the revoked license. In the event Ms. Zakaras becomes able to deal with her AODA issues, she can reapply for licensure after one year....

(*Id.*).

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).<sup>5</sup> Respondent Zakaras' above-noted conduct evinces that she has a serious drug and alcohol problem that poses a significant danger to the public she serves (her patients), if untreated. Her inability to participate in these proceedings shows that she has not yet been rehabilitated, strengthening this concern. Revoking Respondent Zakaras' license to practice nursing is thus not only appropriate, it is necessary to protect the public. If Respondent Zakaras becomes able to deal with her AODA issues at some point in the future, she will have the opportunity to reapply for licensure after one year's time.

#### Costs

The Division requests that Respondent Zakaras 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;

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<sup>5</sup> The third purpose of discipline is to deter other licensees from engaging in similar contact.

- 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 Zakaras should be assessed the full amount of recoverable costs. Her alleged conduct is of a serious nature, she did not participate in these proceedings, there is no argument that certain factual findings were investigated and litigated unnecessarily – (indeed, the respondent admitted her wrongdoing with respect to several allegations), and given the program revenue nature of the Department of Regulation and Licensing, fairness again dictates imposing the costs of disciplining Respondent Zakaras on Respondent Zakaras, 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 Jamie A. Zakaras, R.N. to practice nursing in the State of Wisconsin be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent Zakaras’ 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 Zakaras 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 Jamie A. Zakaras.

Dated at Madison, Wisconsin on May 24, 2011.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
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By:   
Amanda Tollefsen  
Administrative Law Judge

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