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Before The
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against JEANNE M. WEINGART, R.N.,
Respondent

FINAL DECISION AND ORDER

Order No. _____
ORDER 0000969

Division of Enforcement Case No. 09 NUR 394

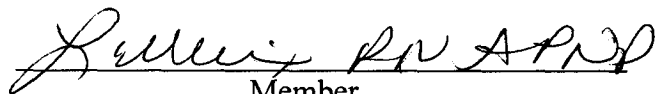
The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 21st day of July, 2011.



Member
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **JEANNE M. WEINGART, R.N.**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-11-0027

Division of Enforcement Case No. 09 NUR 394

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

Jeanne Weingart
1158 Hermitage Road, #1138
Richmond, VA 23220

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, Jeanne M. Weingart. The Division filed said Complaint with the Division of Hearings and Appeals on March 10, 2011. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing to Respondent Weingart at her most recent address on file with the Department of Regulation and Licensing; 1158 Hermitage Road #1138, Richmond, VA 23220. The Notice of Hearing stated that Respondent Weingart 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 April 6, 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 Weingart and Attorney Jeanette Lytle of the Division of Enforcement for April 27, 2011. This Notice instructed Respondent Weingart to contact the undersigned ALJ to provide the telephone number for which she could be reached for the April 27, 2011, telephone conference, and was sent to the address on file for Respondent Weingart, as provided above.

Respondent Weingart did not contact the undersigned ALJ with a telephone number that she could be reached at for the April 27, 2011, telephone conference, and the telephone conference that was conducted on that date was without the respondent’s participation.

At the April 27, 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 Weingart 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 May 6, 2011. It was mailed to Respondent Weingart at the last address on record for her, 1158 Hermitage Road, #1158, Richmond, VA 23220. Attorney Lytle provided the undersigned ALJ with the Division’s written recommendations as to discipline and costs on or about May 5, 2011.

Respondent Weingart has failed to respond to either the Notice of Default issued against her, or the written recommendations provided by Attorney Lytle on May 5, 2011.

FINDINGS OF FACT

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

1. Jeanne M. Weingart, R.N., (DOB 4/17/1959) is licensed as a registered nurse in the State of Wisconsin (license # 30-155872). This license was first granted on 7/19/2006.
2. Respondent Weingart’s most recent address on file with the Wisconsin Board of Nursing is 1158 Hermitage Rd., #1158, Richmond, VA 23220.

3. On May 11, 2008, Respondent was employed as a temporary, full-time nurse at the VA Medical Center in the Rehabilitation, Extended and Community Care Division in Milwaukee, WI. On September 28, 2008, Respondent was converted to a full-time nurse, subject to a two-year probationary period.

4. On September 12, 2008, a home-visit patient reported Respondent having (1) incorrectly set up his pill boxes and (2) failed to include the two pills the patient takes for his gout. It was found that the number of pills filled by Respondent was less than indicated on the medication list.

5. On October 27, 2008, a home-visit patient's primary physician discontinued one of the patient's medications. On October 31, 2008, Respondent set up the patient's medication box with three weeks worth of the discontinued medication. The error was not discovered until November 21, 2008.

6. On December 2, 2008, Respondent set up a home-visit patient's medication box so that it contained three times the prescribed dose of Warfarin for Saturday. The patient was hospitalized from December 13-17, 2008, due to a large retroperitoneal bleed, presumably due to Warfarin. The error was discovered on December 22, 2008.

7. On December 4, 2008, Respondent incorrectly set up the medication box for a home-visit patient and resulted in the patient taking an extra 300 mg of Theophylline until the error was discovered on December 22, 2008.

8. On March 11, 2009, during a hospital board meeting, the Respondent admitted to experiencing neurological symptoms such as severe headaches, vision and balance disturbances, and memory loss, along with multiple life stressors which became a problem for her. Respondent states she was having tests done.

9. On April 6, 2009, Respondent was terminated from her employment with the VA Medical Center, resulting from the above events.

10. Respondent has not (1) responded to any of the Division's communications¹, (2) filed an Answer in this action, or (3) otherwise participated in these proceedings.

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).

¹ See Division's May 5, 2011, Written Recommendations for Discipline and the Imposition of Costs, p. 1.

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

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

7. 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.”

8. Wis. Admin. Code § N 703(1) defines “negligence” to include: “a substantial departure from the standard of care ordinarily exercised by a competent licensee.”²

9. Wis. Admin. Code § N 703(3) further provides that: “[m]ental incompetency” is evidenced by conduct which reflects an impaired ability of the licensee to safely or reliably perform duties....”

² Though not specifically cited in the Complaint, N 7.03(1)(b), and (d) further define “negligence” to include: “(b) [a]n act or omission demonstrating a failure to maintain competency in practice and methods of nursing care;” and “(d) [f]ailing to execute a medical order unless the order is inappropriate and the licensee reports the inappropriate order to a nursing supervisor or other appropriate person.”

10. Respondent Weingart's conduct, as described in Findings of Fact ¶¶ 4-7, above, constitutes negligence pursuant to Wis. Admin. Code §§ N 7.03(1), N 7.03(1)(b), and N 7.02(1)(d), and thus subjects her to discipline pursuant to Wis. Stat. § 441.07(1)(c).

11. Respondent Weingart's conduct, as described in Findings of Fact ¶¶ 4-8, above, constitutes mental incompetency pursuant to Wis. Admin. Code §§ N 7.03(3), and thus subjects her to further discipline pursuant to Wis. Stat. § 441.07(1)(c).

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against her, Respondent Weingart has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that Respondent Weingart: (1) made medication errors with respect to at least four patients; (2) as a result of one of her errors, caused a patient to suffer a large retroperitoneal bleed which required hospitalization; and (3) when confronted about her errors, admitted to experiencing disturbing neurological symptoms and multiple life stressors that were a problem for her. Absent any argument from Respondent, such conduct clearly constitutes negligence pursuant to Wis. Admin. Code § N 7.03(1), N 7.03(1)(b), and N 7.03(1)(d), and mental incompetence pursuant to Wis. Admin. Code § N 7.03(3). Respondent Weingart 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 for Respondent's violations.

Appropriate Discipline

As discipline for her above conduct, the Division requests that Respondent Weingart's license to practice nursing be indefinitely suspended, with the possibility for a stay of suspension if, [and when], Respondent Weingart can provide proof of her fitness to practice. At that point, the Division proposes that Respondent's license could be limited to require supervision and work reports, to ensure continuing fitness. (Division's May 5, 2011 Written Recommendations for Discipline and the Imposition of Costs, p. 1).

The Division maintains that because Respondent Weingart's conduct results from a medical condition, the above discipline is necessary to ensure the safety of the public. (*Id.*)

The undersigned ALJ agrees with the Division's logic, and finds that Respondent Weingart's conduct warrants the indefinite suspension of her license.

Indeed, one of the three stated purposes of discipline is to protect the public from other instances of misconduct. *See State v. Aldrich*, 71 Wis. 2d 206 (1976).³ Respondent Weingart's conduct in making numerous medication errors and her admission to suffering from troublesome neurological symptoms including vision disturbances and memory loss symptoms flags a serious medical and/or psychological condition that very much puts Respondent's patients in danger. Her inability to participate in these proceedings in any way only strengthens that concern. The relief requested by the Division is thus both appropriate and necessary to protect the public from future instances of misconduct by the respondent.

Costs

The Division requests that Respondent Weingart 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

³ The other two purposes of discipline are (1) to promote the rehabilitation of the licensee, and (2) to deter other licensees from engaging in similar conduct. *See Id.*

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 Weingart 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, and given the program revenue nature of the Department of Regulation and Licensing, fairness again dictates imposing the costs of disciplining Respondent Weingart on Respondent Weingart, and not fellow members of the nursing profession who have not engaged in such conduct. 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 Weingart, R.N. to practice nursing in the State of Wisconsin be and is hereby **SUSPENDED FOR AN INDEFINITE PERIOD OF TIME**.

The suspension on Respondent Weingart's license will continue until she provides the Board with proof that she has been assessed as fit to practice. At that time, Respondent Weingart's license may be stayed. Any additional details involved in this process are to be determined by the Board.

IT IS FURTHER ORDERED that if the suspension on Respondent Weingart's license is lifted, her license be **LIMITED** as to require supervision and work reports, to ensure continuing fitness. As before, any additional details involved in this process are to be determined by the Board.


IT IS FURTHER ORDERED that Respondent Weingart 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 Jeanne M. Weingart.

Dated at Madison, Wisconsin on May 31, 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