

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Department of Safety and Professional Services 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 Safety and Professional Services 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 Safety and Professional Services 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 Safety and Professional Services, 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 Safety and Professional Services 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/wsccl>.
- 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 DSPS 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 SHERRI L. DENMAN, L.P.N.,
Respondent

FINAL DECISION AND ORDER

Order No. _____

ORDER 0000971

Division of Enforcement Case No. 09 NUR 144

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 **SHERRI L. DENMAN, L.P.N.**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-11-0009

Division of Enforcement Case No. 09 NUR 144

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

Sherri L. Denman
10001 Waynecrest Lane
Santee, CA 92071

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

Department of Regulation and Licensing, Division of Enforcement, by

Attorney Arthur Thexton
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, Sherri L. Denman. The Division filed said Complaint with the Division of Hearings and Appeals on or about January 26, 2011. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing via regular mail to Respondent Denman at her most recent address on file with the Department of Regulation and Licensing; W6954 Glen Valley Drive, Greenville, WI 54942. It further sent a copy of said documents via certified and regular mail to the address it believed to be Respondent Denman's actual address; 5142 Via Valarta, San Diego, CA 92124-1561. The Notice of Hearing stated that Respondent Denman 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 15, 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 Denman and Attorney Arthur Thexton of the Division of Enforcement for March 1, 2011. This Notice instructed Respondent Denman to contact the undersigned ALJ to provide the telephone number for which she could be reached for the March 1, 2011, telephone conference, and was sent to the addresses on file for Respondent Denman, as provided above.¹

Respondent Denman did not contact the undersigned ALJ with a telephone number that she could be reached at for the March 1, 2011, telephone conference, and the telephone conference that was conducted on that date was without the respondent’s participation.

At the March 1, 2011, conference, Attorney Jeanette Lytle, (who appeared on behalf of Arthur Thexton due to illness on the part of the latter), 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 Denman 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 March 18, 2011. It was mailed to Respondent Denman at the last address on record for her, 10001 Waynecrest Lane, Santee, CA, 92071 (*See* footnote 1). Attorney Lytle provided the undersigned ALJ with the Division’s written recommendations as to discipline and costs on or about March 11, 2011.

Respondent Denman has failed to respond to either the Notice of Default issued against her, or the written recommendations provided by Attorney Lytle on March 11, 2011.

FINDINGS OF FACT

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

1. Sherri Lynn Denman (dob: 9/9/72) is and was at all time relevant to the facts set forth herein a practical nurse licensed in the state of Wisconsin pursuant to license #307874. This license was first granted on 9/18/06. Her address listed in the Board’s records is W6954 Glen Valley Dr., Greenville, WI 54942, however her actual address is believed to be 10001 Waynecrest Lane, Santee, CA, 92071. Respondent is or has been licensed as a nurse in Iowa or Minnesota.

¹ The Division of Hearings and Appeals resent this notice to the respondent at 10001 Waynecrest Lane, Santee, CA, 92071 on February 22, 2011, upon being informed that this was her forwarding address.

2. On 2/5/08, Respondent pled guilty in the District Court for Scott County, Minnesota, of obtaining a controlled substance by fraud or deceit, contrary to Minn. Stat. § 152.025 sub. 2(2)(i), a felony. Conviction was withheld and she was placed on probation for 36 months, conditions of which included 40 hours of community service, submitting to an AODA assessment, and paying costs of \$400.

3. The facts which underlie the prosecution are that she telephoned multiple prescriptions for a hydrocodone product, a Schedule III controlled substance, to pharmacies, purporting to have been authorized by her employing physician when, in fact, they were not so authorized. The prescriptions were intended for use by Respondent's boyfriend, to treat back pain.

4. On a date unknown, but several months before 12/11/10, Respondent moved to California, but failed to notify the Board of any change of address.

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 Denman at her last known address, and to additional addresses as they became known, she was duly served with these papers pursuant to Wis. Admin. Code § RL 2.08.

4. As the licensee, it was Respondent Denman's responsibility to keep her address on record with the Department of Regulation and Licensing current. Wis. Stat. § 440.11(1). She failed to do so.

5. Respondent Denman 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 Denman 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. Wis. Admin. Code § N 704(15) further defines “misconduct or unprofessional conduct” to include, “Violating any rule of the board.”

12. Respondent Denman’s conduct, as described in Findings of Fact ¶¶ 2-3, constitutes misconduct or unprofessional conduct contrary to Wis. Admin. Code §§ N 7.04, N 7.04(1), N 7.04(2), and N 7.04(15). She is thus subject to discipline pursuant to 441.07(1)(d).

13. Respondent Denman’s conduct, as described in Findings of Fact ¶¶ 4, violates Wis. Stat. § 440.11(1), and as such, further constitutes unprofessional conduct contrary to Wis. Admin. Code § 7.04(15).

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against her, Respondent Denman has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that Respondent Denman: (1) pled guilty to obtaining a controlled substance by fraud or deceit, in violation of Minn. Stat. § 152.025 sub. 2(2)(i), and (2) telephoned multiple prescriptions for a hydrocodone product, a Schedule III controlled substance, to pharmacies, purporting to have been authorized by her employing physician when, in fact, they were not so authorized. Such conduct clearly violates Wis. Admin. Code §§ N. 7.04, N. 7.04(1), N. 7.04(2), and N. 7.04(15). (See Conclusions of Law, ¶¶ 8-11). Respondent Denman 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

As discipline for her above violations, the Division requests that Respondent Denman's license be revoked. In support of this recommendation, it argues that:

Ms. Denman did not answer the Complaint or otherwise appear in these proceedings. Although the state may have recommended a different outcome had she appeared in these proceedings and defended her actions, without her participation in the hearing process we have no choice but to assume that she is not contrite and may continue her criminal actions, at substantial risk to the public.

(Division's March 11, 2011 Written Recommendations For Discipline and the Imposition of Costs).

It further notes that:

Wis. Stat. § 441.07(2) provides that after one year, the board may reinstate the revoked license. In the event that Ms. Denman decides to be responsible for her conduct, 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 at that time.

(*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).² Respondent's conduct in fraudulently obtaining a Schedule III narcotic for her boyfriend shows that she is very much a danger to the public. Her failure to participate in these proceedings shows that she has yet to be rehabilitated. The relief requested by the Division is thus appropriate and even necessary to protect the public from future instances of misconduct by the respondent. If Respondent Denman should wish to practice nursing again in Wisconsin, she will have the opportunity to reapply after one year's time.

Costs

The Division requests that Respondent Denman 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:

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

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 Denman 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 Denman on Respondent Denman, 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 Sherri L. Denman, L.P.N. to practice nursing in the State of Wisconsin be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent Denman'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 Denman 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:

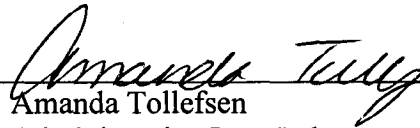
**Department Monitor
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Sherri L. Denman.

Dated at Madison, Wisconsin on May 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