

## 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 MEGAN H. HILA, L.P.N., Respondent

FINAL DECISION AND ORDER

Order No.

ORDER 0000972

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Division of Enforcement Case No. 10 NUR 533

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.

A handwritten signature in cursive script, appearing to read "L. McKin RNAPNP".

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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 **MEGAN H. HILA, L.P.N.**, Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. DRL-11-0026

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Division of Enforcement Case No. 10 NUR 533

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

Megan H. Hila  
3523 Greendale Drive, Apt. # 1  
Rockford, IL 61109

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, Megan H. Hila. The Division filed said Complaint with the Division of Hearings and Appeals on or about March 10, 2011. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing to Respondent Hila at her most recent address on file with the Department of Regulation and Licensing; 3523 Greendale Drive, Apt. # 1, Rockford IL, 61109. The Notice of Hearing stated that Respondent Hila 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 or about 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 Hila and Attorney Jeanette Lytle of the Division of Enforcement for April 27, 2011. This Notice instructed Respondent Hila 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 Hila, as provided above.

The above Notice of Telephone Prehearing Conference was returned to the ALJ as not deliverable as addressed.

Not surprisingly, Respondent Hila 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 Hila 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 Hila at the last address on record for her, 3523 Greendale Drive, Apt. #1, Rockford, IL, 61109, and again returned to the ALJ as not deliverable. Attorney Lytle provided the undersigned ALJ with the Division’s written recommendations as to discipline and costs on or about May 5, 2011.

Respondent Hila 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. Megan H. Hila, L.P.N., (DOB 02/24/1972)) is duly licensed as a practical nurse in the State of Wisconsin (license # 31-307154). This license was first granted on April 14, 2006. It expired on or about April 30, 2007. Respondent renewed her license on December 18, 2009

2. Respondent's most recent address on file with the Wisconsin Board of Nursing is 3523 Greendale Drive, Apt. # 1, Rockford, IL 61109.

3. On or about January 29, 2008, through May 1, 2008, Respondent's nursing home employer noted that various patient Fentanyl patches were "dry," meaning they were empty of the narcotic gel they were supposed to contain.

4. On or about May 1, 2008, Respondent submitted to a random drug screen. It was positive for Fentanyl.

5. The Illinois Board of Nursing brought a disciplinary action against Respondent, and on September 11, 2009, issued a default judgment revoking her license to practice nursing in Illinois.

6. On or about December 18, 2009, Respondent renewed her Wisconsin nursing license.

7. Respondent has not (1) responded to the Division's attempts to communicate with her regarding this case<sup>1</sup>, (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).

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 Hila at her last known address, she was duly served with these papers pursuant to Wis. Admin. Code § RL 2.08.

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

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

5. Respondent Hila 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 Hila 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. Respondent Hila's conduct, as described in Findings of Fact ¶¶ 3-6, above, constitutes a violation of Wis. Admin. Code §§ N. 7.04(1), (2) and (7), subjecting her to discipline pursuant to Wis. Stat. § 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 Hila has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that Respondent Hila: (1) tested positive Fentanyl during a random drug screen conducted after her employer noted that various patient Fentanyl patches were devoid of the narcotic gel; (2) had her license to practice nursing revoked in the state of Illinois (September 11, 2009), assumedly for the former conduct; and (3) shortly thereafter, on or about December 18, 2009, renewed her Wisconsin nursing license. Absent any argument from Respondent, 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 nursing<sup>2</sup>; (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,” and (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. Respondent Hila 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 Hila’s violations.

### Appropriate Discipline

The Division requests that Respondent Hila’s license to practice nursing be revoked. (Division’s May 5, 2011, Written Recommendations for Discipline and the Imposition of Costs). In support of this recommendation, the Division asserts that:

The three goals of discipline are to: (1) promote the rehabilitation of the licensee; (2) protect the public from other instances of misconduct; and (3) deter other licensees from engaging in similar conduct.<sup>3</sup> The Division [] believes that revocation is the only discipline that will achieve these goals in this case. Revocation will protect the public, it will deter other licensees, and hopefully, the negative impact on the Respondent will help her realize the nature of her addiction and seek treatment. Wis. Stat. § 441.07(2) provides that after one year the board may reinstate a revoked license, so in the vent Ms. Hila becomes able to deal with her AODA issues, she can reapply for licensure after a year....

Although the Board often imposes the lesser discipline in drug diversion cases of allowing nurses to work under a stayed suspension while receiving AODA treatment, Ms. Hila did not answer the Complaint or otherwise appear in these proceedings. Clearly, at this time she is not ready to obtain treatment or comply with any kind of treatment regimen, as she was offered that option by stipulation, and did not respond....”

(*Id.* at pp. 1-2).

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

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<sup>2</sup> Though the Division does not cite the specific statute and/or ordinance that Respondent Hila’s conduct violates, it can be reasonably presumed that the respondent’s conduct in diverting narcotics from her employer, and the patients they were prescribed for, violates numerous “laws” substantially related to the practice of nursing.

<sup>3</sup> See *State v. Aldrich*, 71 Wis. 2d 206 (1976)

Respondent Hila's conduct in diverting narcotic medications from her patients, and testing positive for Fentanyl while at work evinces that she has little concern for the health and/or safety of the public she serves. Her inability to participate in these proceedings further shows that she has not yet rehabilitated, and thus is still very much a danger to the public. 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 Hila 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 Hila should be assessed the full amount of recoverable costs. Her alleged conduct is of a serious nature, she did not participate in the proceedings against her, 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 Hila on Respondent Hila, 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 Megan H. Hila, L.P.N. to practice nursing in the State of Wisconsin be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent Hila’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.

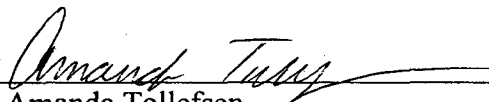
IT IS FURTHER ORDERED that Respondent Hila shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. After the amount is established payment shall be made by certified check or money order payable to the Wisconsin Department of Regulation and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

Dated at Madison, Wisconsin on June 1, 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

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