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Before The
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against STAAREZE MICKELSON, L.P.N.,
Respondent

FINAL DECISION AND ORDER

Order No.

ORDER 0000973

Division of Enforcement Case No. 10 NUR 349

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.

L. Ullrich RN, ANP

Member
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings Against
STAAREZE MICKELSON, L.P.N., Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-11-0033

Division of Enforcement Case Nos. 10 NUR 349

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

Staareze Mickelson
1819 Aberg Avenue
Madison, WI 53704

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, Staareze Mickelson. The Division filed said Complaint with the Division of Hearings and Appeals on March 31, 2011. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing to Respondent Mickelson at her most recent address on file with the Department of Regulation and Licensing; 4702 Dutch Mill Road Lot 28, Madison, Wisconsin, 53716-4155. The Division also sent a copy of the Complaint and Notice of hearing to Respondent Mickelson at the address it believed to be her actual address; 1819 Aberg Avenue, Madison, Wisconsin, 53704-4201. The Notice of Hearing stated that Respondent Mickelson 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 May 3, 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 Mickelson and Attorney Jeanette Lytle of the Division of Enforcement for May 16, 2011. This Notice instructed Respondent Mickelson to contact the undersigned ALJ to provide the telephone number for which she could be reached for the May 16, 2011, telephone conference, and was sent to both the address on with the file for Respondent Mickelson with the Department of Regulation and Licensing, and the address it believed to be Respondent Mickelson’s actual address, as provided above.¹

Respondent Mickelson did not contact the undersigned ALJ with a telephone number that she could be reached at for the May 16, 2011, telephone conference, and the telephone conference that was conducted on that date was without Respondent’s participation.

At the May 16, 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 Mickelson 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 20, 2011. It was mailed to Respondent Mickelson at the address believed to be her actual address; 1819 Aberg Avenue, Madison, WI 53704. Attorney Lytle provided the undersigned ALJ with the Division’s written recommendations as to discipline and costs on or about May 20, 2011.

Respondent Mickelson has failed to respond to either the Notice of Default issued against her, or the written recommendations provided by Attorney Lytle on May 20, 2011.

FINDINGS OF FACT

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

1. Staareze Mickelson, L.P.N., Respondent, date of birth 05/26/1979, was licensed by the Wisconsin Board of Nursing as a practical nurse pursuant to license number 31-306062, which was first granted September 12, 2005. The Board of Nursing summarily suspended Respondent Mickelson’s license on March 24, 2011, however, the Division was unable to achieve service of the

¹ The Notice sent to the Dutch Mill Road address was returned to the Division of Hearings and Appeals with a forwarding address of 1819 Aberg Avenue, Madison, Wisconsin, 53704-4201. As such, all future correspondence from the Division of Hearings and Appeals was to Respondent Mickelson at her Aberg Avenue address.

summary suspension as Respondent Mickelson's address on file with the Department of Regulation and Licensing, (4702 Dutch Mill Road Lot 28, Madison, Wisconsin, 53716-4155), and forwarding address obtained from criminal authorities, (1819 Aberg Avenue, Madison, Wisconsin, 53704-4201), are no longer valid. Nevertheless, Respondent Mickelson's nursing license expired on April 30, 2011.

2. Respondent's last address reported to the Department of Regulation and Licensing was 4702 Dutch Mill Road Lot 28, Madison, Wisconsin, 53716-4154. Upon information and belief, her address at the time the Complaint was filed was believed to be 1819 Aberg Avenue, Madison, Wisconsin, 53704-4201. The Division, in its Written Recommendations for Discipline and the Imposition of Costs, advised that Respondent may now be living at a Salvation Army in Madison, Wisconsin, but that the Salvation Army has refused to confirm this fact.

3. This case was opened based on a report from a Madison police officer that Respondent had admitted that approximately three times a week for several months, she fraudulently called in prescriptions for Tramadol², hydrocodone³ and Oxycontin⁴, using a physician's name, without the physician's permission. Respondent stated that the prescriptions were for her own personal use.

4. Respondent has been charged with the following offenses relating to prescription drug fraud in Dane, La Crosse, and Vernon counties:

- a) 3 counts in Dane county – obtain prescription drug with fraud;
- b) 2 counts in Dane county – obtain controlled substances by fraud;
- c) 2 counts in La Crosse county – obtain controlled substances by fraud; and
- d) 3 counts in Vernon county – obtain controlled substances by fraud.

5. Attached and incorporated into the Complaint are an Affidavit of Consumer Protection Investigator Daniel Williams, and Exhibits A and B.

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.

² An opioid analgesic.

³ A narcotic opioid analgesic.

⁴ A narcotic opioid analgesic.

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

5. Respondent Mickelson 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 Mickelson 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 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.”

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 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 Mickelson’s conduct, as described ¶¶ 3-4 of the Findings of Fact, constitutes “misconduct or unprofessional conduct, contrary to Wis. Admin. Code §§ N 7.04(1) and N 7.04(2). She is thus subject 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 Mickelson has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that Respondent Mickelson: (1) fraudulently called in prescriptions for Tramadol, hydrocodone and Oxycontin, using a physician's name, without the physician's permission, approximately 3 times a week for several months; and (2) was charged with several counts of prescription drug fraud for this conduct.

Respondent Mickelson's conduct clearly violates Wis. Admin. Code §§ N. 7.04(1), and N. 7.04(2), pertaining to unprofessional conduct. (See Conclusions of Law ¶¶ 9 and 10, above). As such, she is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d). (See Conclusions of Law ¶ 7). 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 Mickelson's right to renew her expired license upon the payment of a fee. In support of this recommendation, it argues that:

“... Since Ms. Mickelson's license is expired, the only available discipline is to revoke her right to renew her license upon payment of a fee. [This] discipline is appropriate in that it will protect the public and provide deterrence. In the event that Ms. Mickelson attempts to renew her license in the future, any new license which is granted can be limited to deal with the specifics of the above allegations.”

(Division's May 20, 2011 Written Recommendations for Discipline and the Imposition of Costs).

Under the above circumstances, (limited discipline alternatives due to an already expired license), the ALJ finds the discipline recommended by the Division to be appropriate.

Indeed, the purpose of discipline is to (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Respondent Mickelson's conduct in fraudulently calling in prescriptions for Tramadol, hydrocodone and Oxycontin for her own personal use, approximately 3 times a week for several months, evinces that she has a serious narcotic addiction that poses a significant danger to the public she serves (patients). Her inability to participate in these proceedings only strengthens this concern, and suggests that she has not yet been rehabilitated. Finally her abuse of position – and license – to achieve her desires must be deterred. For all these reasons, Respondent Mickelson must be disciplined. The relief requested by the Division is thus both appropriate and necessary.

Costs

The Division requests that Respondent Mickelson 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 Mickelson should be assessed the full amount of recoverable costs. Her alleged conduct is of a very 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 Mickelson on Respondent Mickelson, and not fellow members of the nursing profession who have not engaged in such conduct.

Payment of costs will be necessary before Respondent's license can be renewed.

If the Board assesses costs against the respondent, the amount of these costs will be determined pursuant Wis. Admin. Code § RL 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that the right of Respondent Staareze Mickelson to renew her expired license to practice nursing in the State of Wisconsin upon the payment of a fee be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent Mickelson 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:

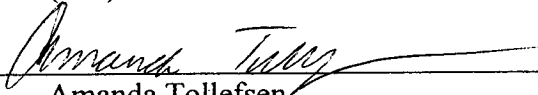
**Department Monitor
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Staareze Mickelson.

Dated at Madison, Wisconsin on June 7, 2011.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7644
FAX: (608) 264-9885

By: _____



Amanda Tollefsen
Administrative Law Judge