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Before The
State Of Wisconsin
BOARD OF NURSING

In the Matter of the Disciplinary Proceedings
Against **DEBBIE R. BUCK, R.N.**, Respondent

FINAL DECISION AND ORDER
Order No. _____

ORDER 0001057

Division of Enforcement Case No. 10 NUR 565

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 1 day of Sept, 2011.

Member
Board of Nursing



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

In the Matter of the Disciplinary Proceedings
Against **DEBBIE R. BUCK, R.N.**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-11-0043

Division of Enforcement Case No. 10 NUR 565

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

Debbie Buck
3437 Gracie Lane
Mobile, AL 36619

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, Debbie R. Buck. The Division filed said Complaint with the Division of Hearings and Appeals on May 11, 2011. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing via both regular and certified mail to Respondent Buck at her most recent address on file with the Department of Regulation and Licensing; 3437 Gracie Lane, Mobile, AL 36619. The Notice of Hearing stated that Respondent Buck 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 31, 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 Buck and Attorney Jeanette Lytle of the Division of Enforcement for June 20, 2011. This Notice instructed Respondent Buck to contact the undersigned ALJ to provide the telephone number for which she could be reached for the June 20, 2011, telephone conference, and was sent to the address on file for Respondent Buck, as provided above.

Respondent Buck did not contact the undersigned ALJ with a telephone number that she could be reached at for the June 20, 2011, telephone conference, and the telephone conference that was conducted on that date was without the respondent’s participation.

At the June 20, 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 Buck 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 June 29, 2011. It was mailed to Respondent Buck at the last address on record for her, 3437 Gracie Lane, Mobile AL 36619. Attorney Lytle provided the undersigned ALJ with the Division’s written recommendations as to discipline and costs on or about June 28, 2011.

Respondent Buck has failed to respond to either the Notice of Default issued against her, or the written recommendations provided by Attorney Lytle on June 28, 2011.

FINDINGS OF FACT

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

1. Debbie R. Buck, R.N., (Date of Birth August 30, 1961) is licensed as a registered nurse in the State of Wisconsin (license # 30-143977). This license was first granted on April 9, 2003.
2. Respondent’s most recent address on file with the Wisconsin Board of Nursing is 3437 Gracie Lane, Mobile, AL 36619.
3. Respondent is licensed as a practical nurse in the state of Alabama (license #2-024621) and as a registered nurse (license #1-068209).

4. On April 3, 2007, Respondent was disciplined by the Alabama Board of Nursing for practicing without a license between January 1, 2007 – February 5, 2007. Respondent was suspended until she paid a fine of \$700 and successfully completed a board-approved course on legal/ethical aspects of nursing. Respondent's suspension was lifted on or about May 11, 2007.

5. On March 21, 2008, Respondent was disciplined by the Alabama Board of Nursing for calling in prescriptions of hydrocodone for personal use without authorization while employed at the Mobile County Metro Jail. Respondent used the medical director's DEA number without his permission. Respondent was placed on probation for 12-months and ordered to pay a fine of \$300, satisfactorily complete a board-approved course on chemical dependency and legal ethical aspects of nursing, participate in random drug testing, practice under on-site monitoring, and submit employer and self reports.

6. On May 5, 2008 and June 13, 2008, Respondent was sent notice that she was in violation of the March 21, 2008 Order because she failed to comply with the conditions of the Order.

7. On August 27, 2008, Respondent was sent a letter by Certified Mail requesting her to contact the Board and notifying her that she was in violation of the Order because she failed to comply with the conditions of the Order. The certified mail was unclaimed.

8. On May 22, 2009, due to Respondent's failure to comply with the March 21, 2008 Order, the Alabama Board of Nursing revoked Respondent's Alabama Practical Nurse License, #2-024621, and Alabama Registered Nurse License, #1-068209.

9. As set out in the Procedural History above, a Complaint and Notice of Hearing were sent to Respondent Buck at her most recent address on file with the Department of Regulation and Licensing/Wisconsin Board of Nursing on May 11, 2011.

10. On or about May 31, 2011, the undersigned ALJ sent a Notice of Telephone Prehearing Conference for June 20, 2011, to Respondent Buck at the above-listed address.

11. Respondent Buck did not appear at this hearing, and the Division made a motion for default which was summarily accepted by the undersigned ALJ.

12. On or about June 20, 2011, the undersigned ALJ sent a Notice of Default to Respondent Buck at her last known address.

13. Respondent Buck has not responded to this Notice, or otherwise to the Complaint against her.

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

5. Respondent Buck 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 Buck has admitted to the allegations of the Complaint 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(7) further defines “misconduct or unprofessional conduct” to include: “Having disciplinary action through final board adjudication taken against one’s license in another jurisdiction.”

10. Respondent’s conduct, as described in paragraphs 4-8 of the Findings of Fact, above, constitutes a violation of Wisconsin Administrative Code § N 7.04(7) and subjects Respondent 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 Buck has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that Respondent Buck: (1) was disciplined by the Alabama Board of Nursing on April 3, 2007, for practicing without a license for approximately one month in early 2007; (2) was disciplined by the same board on March 21, 2008, for calling in prescriptions of hydrocodone for personal use without authorization; (3) as a result, was placed on probation for 12-months and ordered to pay a fine of \$300, satisfactorily complete a board-approved course on chemical dependency and legal ethical aspects of nursing, participate in random drug testing, practice under on-site monitoring, and submit employer and self reports, and (4) failed to comply with the terms of this probation, and thus, had her license to practice nursing in Alabama revoked. (*See Findings of Facts*).

Such conduct clearly violates Wis. Admin. Code § N. 7.04(7) (including as misconduct, “Having disciplinary action through final board adjudication taken against one’s license in another jurisdiction.”). (*See Conclusions of Law ¶ 9, 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 Buck’s license to practice nursing in the state of Wisconsin. In support of this recommendation, it argues that:

.... When a nurse diverts medication, the Board typically suspends their licenses for an indefinite period, then stays the suspension contingent on AODA treatment, drug testing, and practice restrictions. In this case, Ms. Buck has already been offered a similar opportunity by the Alabama Board, and did not comply. Further, she has ignored the Complaint in this matter. Under the circumstances, it seems unlikely that Ms. Buck would comply with the board’s typical order. Therefore, the Division of Enforcement recommends that Ms. Buck’s nursing license be revoked. Revocation would protect the public and deter other licensees from engaging in similar conduct.

(Division’s June 28, 2011, Written Recommendations for Discipline and the Imposition of Costs, p. 1).

The Division further notes that:

If Ms. Buck becomes amenable to rehabilitation in the future, she can reapply and, after a year, the board can reinstate her license if appropriate. *Wis. Stat. § 441.07(2)*. (*Id.*).

Under the circumstances of this case, the undersigned administrative law judge agrees with the Division's recommendation of discipline.

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).¹ Respondent Buck's above-noted conduct evinces that she has a serious chemical dependency that poses a significant danger to the public she serves (her patients), if left untreated. Her inability to participate in these proceedings, or to comply with the terms of her probation in Alabama, shows that she is not yet rehabilitated, only strengthening the ALJ's above concern. Revoking Respondent Buck's license to practice nursing is thus not only appropriate, it is necessary to protect the public. If Respondent 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 Buck be ordered to pay the full costs of its investigation and of these proceedings, as her conduct was serious and intentional, and she has not responded to the Division's attempts to communicate with her. (Written Recommendations for Discipline and the Imposition of Cost, pp. 1-2).

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

¹ The third purpose of discipline is to deter other licensees from engaging in similar conduct. Revoking Respondent's license will accomplish this goal.

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 Buck 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 Buck on Respondent Buck, 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 Debbie R. Buck, R.N. to practice nursing in the State of Wisconsin 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 Buck 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:

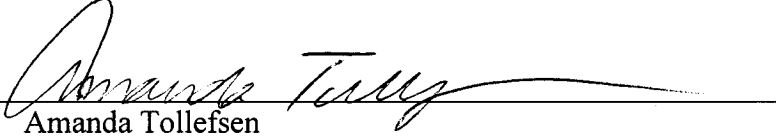
**Department Monitor
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Debbie R. Buck.

Dated at Madison, Wisconsin on July 14, 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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