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Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against ANN MARIE DAVIS, R.N., Respondent

FINAL DECISION AND ORDER
Order No. _____

ORDER 0001058

Division of Enforcement Case No. 10 NUR 526

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 **ANN MARIE DAVIS, R.N.**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-11-0037

Division of Enforcement Case No. 10 NUR 526

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

Ann Marie Davis
160 South State Hwy. M553, Lot 136
Gwinn, MI 49841-8759

Ann Marie Davis
296 E. State Highway M 35 Apt. 1
Gwinn, MI 49841-9053

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

Department of Regulation and Licensing, Division of Enforcement, by

Attorney Chad Koplien
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, Ann Marie Davis. The Division filed said Complaint with the Division of Hearings and Appeals on April 25, 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 Davis at her most recent address on file with the

Department of Regulation and Licensing; 296 E. State Hwy M 35, Apt. 1, Gwinn, MI, 49841-9053. The Notice of Hearing stated that Respondent Davis 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 23, 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 Davis and Attorney Chad Koplien of the Division of Enforcement for June 2, 2011. This Notice instructed Respondent Davis to contact the undersigned ALJ to provide the telephone number for which she could be reached for the June 2, 2011, telephone conference, and was sent to the address on file for Respondent Davis, as provided above.

Respondent Davis did not contact the undersigned ALJ with a telephone number that she could be reached at for the June 2, 2011, telephone conference, and the telephone conference that was conducted on that date was without the respondent’s participation.

At the June 2, 2011, conference, Attorney Koplien made a motion for default pursuant to Wis. Admin. Code § RL 2.14. The undersigned ALJ summarily accepted Attorney Koplien’s default motion and issued a Notice of Default instructing Respondent Davis 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 Koplien to provide the undersigned ALJ with the Division’s written recommendations for discipline and the assessment of costs in this matter by June 10, 2011. It was mailed to Respondent Davis at the last address on record for her, 296 E. State Hwy M 35, Apt. 1, Gwinn, MI 49841-8759. Attorney Koplien provided the undersigned ALJ with the Division’s written recommendations as to discipline and costs on or about June 3, 2011.

Respondent Davis has failed to respond to either the Notice of Default issued against her, or the written recommendations provided by Attorney Koplien on June 3, 2011.

On June 21, 2011, the Division of Hearings and Appeals received a change of address form (Form 3547) from the United States Postal Service indicating that Respondent had a new address: 160 S. State Highway M553 Lot 136, Gwinn Mi 49841-8759. Thus, on June 22, 2011, the undersigned ALJ resent the Notice of Telephone Prehearing Conference and Notice of Default to Respondent at that address. As of today’s date, Respondent has (again) failed to respond to either one of these documents.

FINDINGS OF FACT

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

1. Ann Marie Davis, R.N., (D.O.B. 10/10/1963) is licensed as a professional nurse in the State of Wisconsin (license # 30-108493). This license was first granted on September 18, 1991.

2. Respondent's most recent address on file with the Wisconsin Board of Nursing is 296 E. State Highway M35 Apt. 1, Gwinn, MI 49841-9053.

3. On January 6, 2010, the Michigan Board of Nursing issued a Consent Order and Stipulation that suspended Respondent's license to practice as a registered nurse in the state of Michigan with reinstatement to a full and unlimited status upon receipt of satisfactory written evidence from the Health Professional Recovery Program ("HPRP") verifying that Respondent entered into a disciplinary, non-confidential monitoring agreement. Said Consent Order will remain in effect until the HPRP has either endorsed that Respondent can safely practice, or until the HPRP has determined that Respondent does not require treatment monitoring.¹

4. The Consent Order found that the following allegations of fact, found in the Complaint filed on August 6, 2009, by the Michigan Department of Community Health, to be true:

- a) On January 29, 2007, Respondent self-reported her chemical dependency the HPRP. Respondent admitted she was awaiting sentencing on a home invasion conviction, where, after a night of drinking, she broke into a stranger's home and stole prescription medication. Respondent also admitted to multiple emergency room visits to obtain pain medication and to consuming over one pint of vodka twice per week for approximately one year.
- b) On March 7, 2007, Respondent was diagnosed with depressive disorder not otherwise specified, alcohol dependence, and opiate abuse.
- c) [Sometime thereafter,] in 2007, Respondent acknowledged her impairment and entered into a three-year non-disciplinary monitoring agreement with the HPRP, which required her to: a) abstain from the use of alcohol, controlled substances and other mood-altering substances; b) submit to random urine drug screens; c) participate in individual and group therapy; d) submit 12-step meeting attendance logs; e) submit quarterly sponsor reports; and f) submit monthly self-reports.

¹ Unfortunately, no evidence has been presented to indicate whether Respondent has complied with the terms of this Consent Order and Stipulation, and/or whether it is still in effect.

- d) On January 23, 2009, Respondent submitted a diluted urine sample, suggesting possible adulteration.
- e) One June 10, 2009, Respondent's treating therapist reported to the HPRP that Respondent had failed to attend scheduled therapy sessions as well as her scheduled June 3, 2008, group therapy appointment.
- f) One June 11, 2009, HPRP informed Respondent she was noncompliant with the terms of her monitoring agreement because she had failed to submit required urine drug screens, failed to submit 12-step meeting attendance logs since March 2009, failed to submit monthly self-reports since April 2009, and failed to submit sponsor reports from March 2008 to December 2008.
- g) On June 29, 2009, after receiving no contact from Respondent, HPRP closed Respondent's file and forwarded it to the Michigan Department of Community Health for disposition.

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 Davis 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 Davis' responsibility to keep her address on record with the Department of Regulation and Licensing current. Wis. Stat. § 440.11(1).
5. Respondent Davis 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 Davis 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 Davis’ conduct, as described ¶ 4 of the Findings of Fact, constitutes misconduct or unprofessional conduct, contrary to Wis. Admin. Code §§ N 7.04 and N.7.04(7). 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 Davis has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that Respondent Davis: (1) in January 2007, broke into a stranger’s home (in Michigan) and stole prescription medication; (2) admitted to making multiple emergency room visits to obtain pain medication and to consuming over one pint of vodka, twice per week, at this time; (3) acknowledged her impairment, and entered into a three-year non-disciplinary monitoring agreement with the Michigan HPRP, which required her to abstain from the use of alcohol and controlled substances, submit to random drug screens, participate in individual and group therapy, attend 12-step meetings, submit sponsor reports and submit self-reports; (4) violated virtually all these terms; and, (5) as a result, had her file with HPRP closed, and forwarded to the Michigan Department of Community Health for disposition. (*See Findings of Facts*)

Such conduct clearly violates Wis. Admin. Code § N. 7.04(7) (pertaining to unprofessional conduct). (*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 Davis' license to practice nursing in the state of Wisconsin. In support of this recommendation, it argues that:

....Ms. Davis did not answer the Complaint or otherwise appear in these proceedings. Although the Board often allows nurses to work under a stayed suspension in diversion cases while receiving AODA treatment, Ms. Davis is clearly not ready to obtain treatment or comply with any kind of testing regime, as she has yet to comply with Michigan's HPRP.

(Division's June 3, 2011, Written Recommendations for Discipline and the Imposition of Costs, p. 1).

The Division further notes that:

Wis. Stat. § 441.07(2) provides that after one year, the board may reinstate the revoked license. In the event Ms. Davis becomes able to deal with her AODA issues, she can reapply for licensure after one year....

(*Id.*).

Interestingly, the Michigan Board of Nursing merely suspended Respondent's license until the HJPRP has determined that Respondent can safely practice (after a period of disciplinary, non-confidential treatment monitoring), or until they determine she does not require treatment monitoring. (*See Findings of Fact*, ¶ 3).

In the absence of any argument from Respondent, however, the undersigned ALJ believes the discipline recommended by the Division is more than 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 Davis' above-noted conduct evinces that she has a serious drug and alcohol problem 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 her three-year monitoring agreement with the Michigan HPRP, shows that she is not yet rehabilitated, only strengthening the ALJ's above concern. Revoking Respondent Davis' 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.

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

Costs

The Division requests that Respondent Davis be ordered to pay the full costs of its investigation and of these proceedings. (Written Recommendations for Discipline and the Imposition of Cost, p. 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 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 Davis 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

Davis on Respondent Davis, 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 Ann Marie Davis, 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 Davis 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:

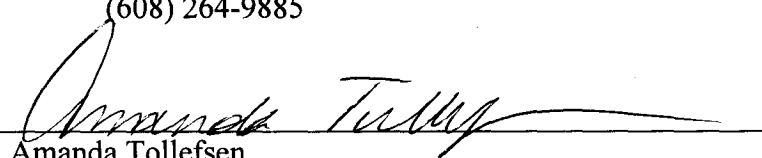
**Department Monitor
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Ann Marie Davis.

Dated at Madison, Wisconsin on June 30, 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