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Before The
State Of Wisconsin
BOARD OF NURSING

In the Matter of the Disciplinary Proceedings Against
PATTI A. SEIDLKASTER, R.N., Respondent

FINAL DECISION AND ORDER

ORDER 0000741

Division of Enforcement Case Nos. 09 NUR 042, 11 NUR 070

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 26 day of January 2012

A handwritten signature in black ink, appearing to read "Linda A. [unclear]", written over a horizontal line.

Member
Board of Nursing



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

In the Matter of the Disciplinary Proceedings
Against **PATTI A. SEIDLKASTER, R.N.**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-11-0030

Division of Enforcement Case Nos. 09 NUR 042, 11 NUR 070

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

Patti A. Seidlkaster
W5998 Strawflower Drive
Appleton, WI 54915

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

Department of Safety and Professional Services, Division of Enforcement, by:

Attorney Arthur Thexton
Department of Safety and Professional Services
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The procedural matters leading up to this hearing are as follows:

On or about March 31, 2011, the Department of Safety and Professional Services¹, Division of Enforcement (Division) filed a formal Complaint against Respondent Patti Seidlkaster (Respondent), alleging that:

- 1) while employed as an operating room (registered) nurse at Theda Clark Hospital in Neenah, Wisconsin, Respondent admittedly stole prescription forms from her employer, filled forged prescriptions of Percocet, a Schedule II narcotic, on two different occasions,

¹ Then known as the Department of Regulation and Licensing.

and attempted to fill a forged prescription on one additional occasion – conduct for which she was charged with one misdemeanor count of Wis. Stat. § 450.11(7)(a), “Obtaining a prescription drug with fraud,” in Winnebago County, and two felony counts of Wis. Stat. §§ 961.43(1)(a), “Obtaining a controlled substance by fraud,” in Outagamie County, in violation of Wis. Admin. Code. §§ N 7.03(1)(violation of substantially related law) and (2)(obtaining drug(s) by illegitimate means).

- 2) as a result of a motorcycle accident she suffered on July 1, 2008, (a) was diagnosed with an organic mood disorder, which may have adversely affected her judgment and reasoning skills, possibly contributing to her conduct which resulted in the criminal charges that were pending against her (*see above ¶*), (b) reported having memory problems to at least one doctor, and (c) displayed (and was terminated for displaying) an impaired ability to safely and reliably practice nursing, including inconsistent behavior and moods, in violation of Wis. Admin. Code. § N 7.03(3) (mental impairment).
- 3) falsely represented to the Division, through her attorney, that she had not practiced as a nurse in the state of Wisconsin since she was terminated from her employment at Theda Clark Hospital on January 7, 2009, and that she did not think she would ever be able to return to work in the medical field, when, in fact, she was at that time practicing as a nurse, in violation of Wis. Admin. Code. § N 7.03(intro)(unprofessional conduct).

On or about April 6, 2011, Respondent Seidlkaster, by her (then) attorney, Michael Peterson, filed an Answer to the Division’s Complaint, denying any violations of code or law.

Attorney Peterson has since recused himself from this case (7/7/11).

In a prehearing conference held at the undersigned administrative law judge (ALJ’s) request on October 12, 2011, Respondent stated that she did not contest the first count against her, related to the forgery of several Percocet prescriptions, but noted that she did not forge prescriptions because she was an addict, but because she had unresolved pain following her July 1, 2008, motorcycle accident.² She reiterated her intent to defend herself against the second two charges.

Consistent with due process, the hearing in this matter was held at the Department of Safety and Professional Services Hearing Room on October 4, 2011. It was continued, by telephone, on October 27, 2011.

ISSUES

Upon the conclusion of the hearing, the issue(s) that remain are:

² This is consistent with a letter she sent to the ALJ with respect to this case on or about August 9, 2011, (after her attorney had recused himself), in which she identified that: “As you are aware, I was involved in a motorcycle accident July 1, 2008.... Needless to say, after work I experienced alot [sic] of pain. I’m not trying to make excuses for my poor judgment. I’m trying to get you to understand I was not taking the medication for a ‘high’ [sic] (like most), I was taking them to alleviate the horrible pain that I was suffering from.” Said letter was later forwarded to Mr. Thexton.

- 1) The appropriate discipline for Respondent Seidlkaster's admission of forging Percocet prescriptions?
- 2) Whether Respondent Seidlkaster's motorcycle accident, and the injuries suffered there from, have rendered her mentally incapacitated and/or otherwise impaired to safely and reliably practice nursing, pursuant to Wis. Admin. Code. § N 7.03(3)?
- 3) Whether Respondent Seidlkaster falsely represented to the Division that she was not practicing as a nurse in Wisconsin when, in fact, she was, in violation of Wis. Admin. Code § 7.04(intro), subjecting her to discipline?

FINDINGS OF FACT

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

1. Patti A. Seidlkaster, (formerly Patricia A. Seidl), R.N., Respondent, date of birth December 14, 1965, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 112833, which was first granted March 24, 1993. On March 24, 2011, the Board summarily suspended Respondent's license.

2. Respondent's most recent address reported to the Department of Safety and Professional Services is W5998 Strawflower Drive, Appleton, WI 54915.

COUNT I

3. In October 2008, Respondent had been employed as a registered nurse at Theda Clark Hospital in Neenah for 18 years and was working in the Aylward Outpatient Surgery Center as an operating room nurse when she stole prescription pads/paper from her employment and forged prescriptions for her own personal use:

a. On October 1, 2008, Respondent went to a Walgreens Pharmacy in Appleton and filled a forged prescription from her worksite for 60 tablets of Percocet (oxycodone), a narcotic analgesic and Schedule II controlled substance.

b. On December 11, 2008, Respondent returned to the Walgreens Pharmacy in Appleton and had filled another forged prescription from her worksite for 60 tablets of Percocet.

c. On January 5, 2009, Respondent went to a Walgreens Pharmacy in Menasha and attempted to fill a forged prescription from her worksite of 60 tablets of Percocet. The pharmacist there was familiar with the physician (on the prescription pad's) actual signature and became suspicious and alerted the hospital.

d. Respondent was interviewed by the hospital administrators and initially denied but later admitted she had stolen prescription pads from work and forged the name of a physician on prescriptions for Percocet. Respondent said she forged the prescriptions because she suffered from headaches and pelvic pain from a motorcycle accident. (At least one counselor confirmed that Respondent exhibited no symptoms of abuse or dependency.) (See State's Exhibit 1, pp. 6-9, Assessment Form and Notes from Sherill Downey LCSW). Respondent's employment was immediately terminated.

e. On March 10, 2009, Respondent was charged in Winnebago County Wisconsin Circuit Court case number 2009CM000290 with one misdemeanor count of violating Wis. Stat. § 450.117(7)(a), "Obtain Prescription Drug w. Fraud." Pursuant to a deferred prosecution agreement, on May 22, 2009, Respondent was placed in the Volunteers in Probation (VIP) Program for 12 months. Respondent successfully fulfilled the agreement and the charge was dismissed on March 5, 2011.

f. On August 21, 2009, Respondent was charged in Outagamie County, Wisconsin Circuit court case number 2009CF00639 with two felony counts of violating Wis. Stat. § 961.43(1)(a), Obtaining a Controlled Substance by Fraud. On June 21, Respondent entered into a 12 month long deferred prosecution agreement, by which she pled no contest to one count and the other count was dismissed but read in for sentencing.

COUNT II

4. On July 1, 2008, Respondent was involved in a motorcycle accident and suffered multiple traumas, including a traumatic brain injury with bifrontal hemorrhagic contusions, multiple skull and facial fractures and complex pelvic fractures. (See State's Exhibit 1).

5. In August 2008, Respondent underwent a comprehensive neuropsychological examination and attained average scores for intellectual and cognitive functioning (including receptive and expressive language skills and learning and memory functioning). Regarding emotional functioning, Respondent "appeared to demonstrate the typical emotional sequelae of a frontal head injury," with emotional lability/increased irritability and being susceptible to becoming emotionally flooded and thus unable to concentrate. A consult with Dr. Thomas Van Sistine, M.D. (psychiatrist) was requested. The report further noted that while Respondent looked very good in terms of her neurocognitive functioning, with no residual cognitive impairments in formalized testing, "she may have some periods of cognitive inefficiency if fatigued or during times of emotional flooding. In addition, she may have more difficulty in settings that are more distracting than the 1 on 1 quiet test setting that these types of evaluation[s] are given in." The report identified that such symptoms should resolve within 6-12 months. (State's Exhibit 5, Comprehensive Neuropsychological Evaluation by Dr. Theresa L. Chinnery, Clinical and Neuropsychologist and licensed psychologist, Ph.D., performed 8/11/08, 8/12/08 and 8/14/08). (Emphasis added).

6. In response to being presented with information that Respondent was charged with forging a prescription for Percocet for personal use, Dr. Van Sistine, M.D., stated in a letter dated March 26, 2009³, that Respondent's "bifrontal cerebral contusions sustained in her accident had resulted in an organic mood disorder with lability. This clearly may have affected her judgment and reasoning skills, possibly playing a role in this decision and act."⁴ (State's Exhibit 6, March 26, 2009 letter authored by Dr. Thomas K. Van Sistine). (Emphasis added).

7. On April 21, 2009, and August 24, 2010, Respondent had appointments with Dr. Van Sistine and reported to him that she "was not remembering things" and that her memory was "kaput" (*i.e.* she was misplacing things, had difficulty navigating, and would enter a room and forget why she was there). At both appointments, Dr. Van Sistine noted her diagnoses included residual post traumatic organic mood disorder, post traumatic headaches and chronic pelvic-hip pain. At the April 21, 2009, appointment, he attributed her memory problems to stress. At the August 24, 2011 appointment, he further noted that Respondent was "neurologically and functionally stable."⁵ (State's Exhibit 7, April 21, 2009, medical record; State's Exhibit 8, August 24, 2010, medical record).

8. Respondent was employed as a nurse with Preferred Home Health Care, located in Menasha and Oshkosh, Wisconsin, from May of 2009 to December of 2010. From May of 2009 through March of 2010, Respondent was employed as a home health nurse, providing direct care, most frequently to a tetraplegic patient. From April 2010 to December 2010, Respondent was employed as a case manager. (Transcript from October 14, 2011, Hearing, p. 85).

9. On December 14, 2010, Preferred Home Health Care terminated Respondent's employment because:

- a. Respondent's "behavior was very inconsistent along with her moods."
- b. Respondent falsified her job application and should not have been working at Preferred Home Health Care as an RN because of the criminal charges for obtaining drugs by fraud.⁶

³ Respondent Dr. Van Sistine examined Respondent prior to authoring this letter, on August 26, 2008 (with a follow-up appointment on September 30, 2008). (See State's Exhibit 8, August 24, 2010, medical record). The results from these appointments have not been made part of the record. Though provided in the certified medical records the Division provided at the hearing of October 14, 2011, introduced as Exhibits 5-8, they were not included in the exhibits provided to the Respondent and to the tribunal on October 7, 2011, per the latter's Scheduling Order. As such, they were not accepted.

⁴ This letter was most likely authored in regard to the criminal proceedings against Respondent in Winnebago and Outagamie counties. (See Transcript from October 27, 2011, Hearing, p. 225; State's Exhibit 10, Deposition of Respondent, pp. 23-24).

⁵ Of interest, Dr. Van Sistine further noted that while Respondent provided him with a handwritten note that explained that she had forged prescriptions for Percocet because she did not feel that either he (Dr. Van Sistine) or Dr. Sears (orthopedist) "would listen to her with regard to her headaches and pain," her medical record demonstrated that she complained of headaches and was already using Percocet at the time of her initial appointment with him. (*Id.*).

⁶ Whether Respondent lied on her job application for Preferred Home Health Care is not an allegation/accusation in the Division's case. (See 10/14 Tr. p. 33). Indeed, it is questionable whether Respondent intentionally falsified her

10. Per Wendy Schaefer (owner of Preferred Home Health Care and registered nurse's) testimony, examples of Respondent's inconsistent behavior and moods included:

a. very loudly asking "Who the fuck was at my desk," after finding a used coffee mug there. (*See* 10/14 Tr. pp. 57-58). (Respondent admits that she did this, but testifies that this was because she often came in to the office after being out for a day (as she did on this particular day) to find that her desk was a mess, and that her charts have been moved, creating more work for herself. (*See* 10/14 Tr. pp. 102-103)).

b. throwing a chart onto the "Medical Records person's" desk, and saying, "There, it's fixed," after being asked, on two occasions, to clarify which of two different routes for a particular medication that she had entered onto a patient's chart was to be utilized. (*See* 10/14 Tr. pp. 59-61).

c. upon receiving a phone call from Ms. Schaefer's inquiring as to where she was when she left the office approximately 45 minutes early one afternoon without punching out, furiously responded that she "went to the bank." (*See* 10/14 Tr. pp. 61-62).

d. saying "Get that fucking thing out of my face. I can't stand bright lights," after someone took her picture at the office Christmas party. (*See* 10/14 Tr. pp. 62-63).

11. Ms. Schaefer further testified that Respondent demonstrated "significant memory problems" while working for her as a case manager, including (a) repeatedly "re-doing" a patient's entire medication chart after a new medication was added, instead of just adding it (handwritten) to the list, after being told on several occasions that the latter option was preferable (*See* 10/14 Tr. pp. 48-50); (b) necessitating that she (Ms. Schaefer) have the same conversations with her (Respondent) "over and over" one day to the next (*See* 10/14 Tr. pp. 50-51); and (c) forgetting that she was on call the Wednesday evening before Thanksgiving (2010), after volunteering to be on call this shift (2010). (*See* 10/14 Tr. pp. 51-54). (Respondent insinuated, in her questioning of Ms. Schaefer, that she did not hear that she was on call Wednesday evening; Ms. Schaefer claims this would have been impossible, as she was speaking directly to her. (*See* 10/14 Tr. pp. 77-78)).

12. Ms. Schaefer further testified that Respondent demonstrated "poor reasoning," while working as case manager, including:

a. changing a doctor's order for clozapine, on her own initiative, from "for pain," to "for anxiety" (for which clozapine is generally prescribed). (*See* 10/14 Tr. pp. 63-64)⁷

job application. (*See* 10/14 Tr. p. 32; Respondent's Exhibit 107; State's Exhibit 10, Deposition of Respondent, pp. 33-36, exhibit 5).

⁷ Respondent testified that she changed this order upon finding documentation that the reason for the patient's medication had changed. (*See* 10/14 Tr. p. 102). In support of this premise, she intended to introduce Respondent's Exhibit 100. Because this exhibit (as well as Exhibits 102-105), all copied from a patient medical records without permission, were objected to by the Division on the grounds of privilege, the ALJ reserved judgment on their acceptance. (*See* 10/14 Tr. pp. 24-28). Upon further review of said exhibits, and Respondent's testimony in relation

b. changing a doctors' order for aspirin, on her own initiative, from 325 mg daily (new general px for daily regimen) to 81 mg daily (old general daily regimen). (See 10/14 Tr. p. 64).

c. failing to call the nurse on call (or chart) when she spilled a disputed amount of liquid Roxicet (10 v. 69 cc)⁸, and failing to document the reasons why she administered this prn oxycodone product. (See 10/14 Tr. pp. 65-69). (Respondent did document that the patient, who was comatose, "was crying off and on," but not until several hours after she administered the medication.⁹ (See 10/14 Tr. pp. 122-123)).

13. Proper procedure when nurse believes that doctors' orders may not be correct is to call the doctor and confirm his order. (See *Id.*).

14. Ms. Schaefer recognized Respondent's alleged irritability and memory problems when Respondent was brought on as case manager in April of 2010. (See 10/14 Tr. pp. 86).

15. Ms. Schaefer never received any complaints about Respondent while she was employed for her as a private duty nurse for a tetraplegic patient from May of 2009 to March of 2010. (See Tr. p. 71).¹⁰ Said patient and her family had fired several nurses before Respondent for not performing to their liking. (See 10/14 Tr. pp. 72, 88, 90-91; 10/27 Tr. 172-175). Said patient and her mother found Respondent's care to be more than competent. (See 10/27 Tr. pp. 169-170, 175-177, 186-187). They did not witness any "mood swings" or "outbursts" from Respondent, but noted that she did a good job of dealing with the patient's depression, and got along well the patient's friends and family. (See 10/27 Tr. pp. 177, 187-88).

16. Care of the tetraplegic patient identified above involved: (a) giving her medications (and possibly also feeding her) through a G-tube; (b) cleaning and replacing her suprapubic catheter biweekly; (c) being "significantly trained and competent" with respect to her ventilator (on which she was dependent for life), what every setting and alarm meant, what to do when the alarm went off, and how to find causes of an alarm going off; (d) being alert to and communicating with the patient, who could not speak, and could only move her eyes and lips; and (e) dealing with all the medication issues that arise from someone on life support. (10/27 Tr. pp. 168-169).

to them (see 10/14 Tr. at pp. 130 *et. sequence*), the ALJ finds that in addition to being improperly garnished, they do not show what Respondent intended to offer them for. As such, they were not admitted.

⁸ Ms. Schaefer maintains that 69 ccs of Roxicet went missing at the time of this incident; Respondent argues that she only spilled 7-10 ccs. (10/14 Tr. pp. 65-69, 101-102). Respondent explains the difference by pointing to the fact that other people were in the home with her, and after her, on the evening in question who may have diverted the Roxicet. (See 10/14 Tr. pp. 101; *see also* pp. 147-148).

⁹ This chart entry was not made part of the record.

¹⁰ As owner of Preferred Home Health Care, she would have been made aware if there were problems with Respondent's work. (*Id.*)

17. One did not need to be a nurse to care for the above patient (said patient's mother and other family members who cared for her); however, said individual needed to be medically trained with respect to her G-tube, catheter and ventilator. (*See* 10/27 Tr. pp. 181-182).

18. Respondent was hired as a case manager because of her demonstrated ability to tackle problems in the field, and because her personality seemed to be a good fit with the position. (10/14 Tr. p. 89).

19. Per Ms. Schaefer, "Case management is a very detailed position," that "not everybody is capable of doing." (*See* 10/14 Tr. pp. 47-48). "Case Managers have to know what the state and federal guidelines are, chart doctor's orders and other documentation accordingly, keep records in order, and juggle seeing patients, receiving phone calls, and filling in for and supervising other nurses patients, keep." (*See* 10/14 Tr. pp. 47-48).

20. Respondent had not been a case manager prior to being hired as one at Preferred Home Health Care. (*See* Tr. 10/14 p. 103). She received approximately two weeks of training, with the understanding that she would learn on the job. (*See* 10/14 Tr. pp. 75, 103).

21. Anne Marie Vogels, a case manager who was terminated by Ms. Schaefer for alleged personality issues just prior to Respondent (September of 2010), testified that: (a) Respondent's mood at the office was "cheerful and appropriate;" (b) she had received 8-10 weeks of "case manager" training (in addition to having been manager before); and (c) believed that Ms. Schaefer was excessively hard on Respondent, calling her in to review charts, etc., weekly, as she testified that she had seen some of Respondent's charts, and they looked appropriate. (*See* 10/14 Tr. pp. 112-116).

22. Nevertheless, Ms. Schaefer testified that Respondent's above-referenced conduct led her to believe that Respondent had problems with her memory, and that she had an impaired ability to safely and reliably perform the duties of a nurse. (*See* 10/14 Tr. pp. 51, 69-70).

23. Respondent exhibited no memory or cognitive problems at hearing.

COUNT III

24. Investigation 09NUR042 was opened on February 26, 2009, based on a report from Theda Clark that they had terminated Respondent's employment for the reasons set out in Count I, above.

25. On March 19, 2009, in response to a DOE inquiry, Respondent sent a letter (State's Exhibit 1), which said she had not worked since her employment was terminated January 7, 2009, and she did not think she would ever be able to return to the medical field. (*See* State's Exhibit 1, State's Exhibit 10, Deposition of Respondent, exhibit 1). Respondent was not working at this time. (*See* ¶ 9, above).

26. Respondent thereafter retained an attorney (date unknown) and commenced employment as a home health nurse (May 2009). (*See* State's Exhibit 10; *see also* ¶ 9, above).

27. On or about September 9, 2010, the Division sent a letter to Respondent's attorney following up on settlement discussions that had taken place in January and February of 2010. (*See* State's Exhibit 9a). The letter asked several questions of her attorney, including "1. Has Ms. Seidlkaster worked as a nurse since February of 2009?" (*See Id.*).

28. Respondent's attorney mailed a copy of this letter to Respondent. (10/27 Tr. pp. 194-195).¹¹

29. Respondent's attorney further met with Respondent at this office to go over the Division's September 9, 2010, letter on September 17, 2010. (10/27 Tr. p. 212).

30. Respondent's attorney "wrote down" Respondent's answers to all of the Division's questions, including question 1, as restated in ¶ 27, above, and drafted a letter, dated September 21, 2009, that accurately reflected all of Respondent's responses. (10/27 Tr. pp. 212-213, 214; *see also* State's Exhibit 9).

31. This letter indicates that Respondent had not been working as a nurse since being terminated from ThedaCare, but, to make a living, had been doing odd jobs not related within the healthcare community. (State's Exhibit 9).

32. Respondent was, in fact, working as a case manager¹² for Preferred at this time, and had been employed by the same as a home health care nurse from May of 2009 until April of 2010. (*See* ¶ 9, above).

33. At hearing, Respondent argued that while her attorney reviewed the questions contained within Exhibit 9a with her¹³, he did not ask her about her employment (or, at least, as to where she was employed, and whether she was specifically employed as a nurse). (*See* 10/14 Tr. p. 125; 10/27 Tr. p. 213-214).

34. At her April 29, 2011 Deposition, Respondent further distinguished that she was not really working as a nurse at the time of her attorney's September 21, 2010 letter (Exhibit 9); she

¹¹ Objections were made to this testimony on the grounds of attorney-client privilege. Per Wis. Stat. 905.03(1)(d), a communication is only confidential (and thus protected by the attorney-client privilege) if "not intended to be disclosed to third persons other than those to whom the disclosure is in furtherance of the rendition of legal services to the client or those reasonably necessary for the transmission of the communication." (*Id.* *See also*, 10/14 Tr. pp. 152-153; 10/27 Tr. p. 196). Because this testimony concerned communications that were intended to be shared with third parties, it is not confidential. *Id.*

¹² Wis. Stat. § 441.001(4)(d) provides that "the supervision of a patient, and the supervision and direction of licensed practical nurses and less skilled assistants," (otherwise known as case management), is the practice of nursing.

¹³ She does not recall if he ever showed her the actual letter. (10/27 Tr. p. 126).

was working as a case manager. (State's Exhibit 10, p. 38, *compare to* Wis. Stat. § 441.001(4)(d)).

35. Neither of these statements is credible.

36. Respondent was extremely defensive during this line of questioning, and contradicted herself on more than one occasion.

37. Nevertheless, it is not clear from the record whether Respondent was ever made aware that the Division would pursue a summary suspension of Respondent's nursing license if she were to seek and/or gain employment as a nurse.

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. The burden of proof in disciplinary proceedings brought before the department or any examining board, affiliated credentialing board or board in the department is a preponderance of the evidence. Wis. Stat. § 440.20(3). *See also*, Wis. Admin. Code HA 1.17(2), (“[u]nless the law provides for a different standard, the quantum of evidence for a hearing decision shall be by the preponderance of the evidence”).

3. “Preponderance of the evidence” is defined as the greater weight of the credible evidence. Wis. Admin. Code § HA 1.01(9). Stated otherwise, is it more likely than not that the alleged events occurred.

4. 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... or may reprimand a registered nurse...,” if the board finds that the registered nurse committed “misconduct or unprofessional conduct.”

5. Wis. Admin. Code § N 7.04 (intro) 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.”

6. Wis. Admin. Code § N 7.04(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. A certified copy of a judgment of conviction is prima facie evidence of a violation.”

7. Wis. Admin. Code § N 7.04(2) 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.” (Emphasis added).

8. Pursuant to Wis. Stat. § 441.07(1)(c), the Board of Nursing has authority to “revoke, limit, suspend or deny renewal of a license of a registered nurse... or may reprimand a registered nurse...,” if the board finds that the registered nurse committed “acts which show the nurse... to be unfit or incompetent by reason of... mental incompetency.”

9. Wis. Admin. Code § N 7.03(3) provides that “mental incompetency is evidenced by conduct which reflects an impaired ability of the licensee to safely or reliably perform duties.”

10. Respondent’s conduct, as described in paragraph 3 of the Findings of Fact, above, and admitted by Respondent in her Answer and at hearing (forging prescriptions for Percocet) constitutes a violation of Wis. Admin. Code §§ N 7.04(1) and (2), and thereby subjects Respondent Seidlkaster to discipline pursuant to Wis. Stat. § 441.07(1)(d).

11. The Division has not met its burden in proving that Respondent’s conduct, as described in paragraphs 9-23 of the Findings of Fact, above, demonstrates “mental incompetency,” as defined by Wis. Admin. Code § N 7.03(3).

12. Respondent’s conduct, as described in paragraphs 24-37 of the Findings of Fact (representing to her attorney and the Division that she was not working as a nurse when she was), constitutes a violation of Wis. Admin. Code § N 7.04 (intro), and thereby subjects Respondent Seidlkaster to discipline pursuant to Wis. Stat. § 441.07(1)(d).

DISCUSSION

Violations of Law and Appropriate Discipline

Issue I:

Because Respondent does not contest that she stole prescription pads from her place of employment (Theda Clark Hospital) in 2008 and used them to forge prescriptions of Percocet for herself, in violation of Wis. Admin. Code § N 7.04(1) and (2), the only question that remains with respect to this claim is what sort of discipline is appropriate for her conduct.

Though the Division’s recommendation for discipline in this case considered all three counts aggregately, with respect to Respondent’s above conduct, it did note that “Normally in a case that comes in involving the admitted abuse of controlled substances, we resolve [the case]

with a standard five-year [impairment] order¹⁴... with the usual kinds of drug screening and treatment provisions to assure that [the respondent] does not relapse to the un-prescribed use of controlled substances.” (10/27 Tr. pp. 215-215).

While The Division gave pause to address the fact that “this case was somewhat unusual” in that Respondent Seidlkaster was “thoroughly screened for substance dependence,” and the counselors [were] “pretty unanimous in their agreement” that Respondent was not an addict “in the classic sense of the word,” but forged the Percocet prescriptions merely to augment her pain medications and control her pain (10/27 Tr. p. 216, *see also* State’s Exhibit 1, pp. 6-9, Assessment Form and Notes from Sherill Downey LCSW), it stressed the fact that she illegally obtained and consumed controlled substances, and did so in a very deliberate way over an extended period of time. (10/27 Tr. pp. 216, 222).

For her part, Respondent argued that while she realizes she made a “huge mistake” in forging numerous prescriptions for Percocet, she did not do so to “get high,” but rather, to relieve the pain she was dealing with following her motorcycle accident. (10/27 Tr. p. 225).

The undersigned ALJ agrees with the Division that while Respondent Seidlkaster may not be an addict, the gravity of her offense in stealing prescription pads from her hospital employer, and taking controlled substances without any prescription or monitoring, requires further assessment, monitoring, and perhaps even treatment, commensurate with the “standard impairment order” (*see* footnote 3, *supra*). Indeed, the three goals of discipline are: (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). Though she may not be an addict, Respondent’s forgery of prescriptions to relieve unresolved pain crossed a very dangerous line. Moreover, it had the potential to lead to abuse and/or addiction, putting both herself and the public she serves (patients) in harm’s way. As such, it is essential for the Board to ensure that Respondent Seidlkaster does not “relapse into the un-prescribed use of controlled substances,” and that other nurses do not take the same dangerous steps to relieve pain as she did.¹⁵

Given that Respondent has not been identified as and does not appear to be an addict, however, the ALJ believes more discretion should be given to Respondent’s treaters/counselors in determining Respondent’s course of treatment, whether certain aspects of it are necessary (*i.e.* N.A.), and the frequency and duration of drug tests than is given in standard impairment orders.

¹⁴ Consistent with previous decisions (*see i.e. In re Disciplinary Proceedings against Christele Williams* (2011) and *In re Disciplinary Proceedings against Zetisha Kayde* (2011)), the Board’s “standard impairment order,” includes an indefinite suspension of not less than five (5) years, with an opportunity to stay the suspension after six (6) months if certain conditions are met (compliance with drug treatment, testing and counseling), and restricted practice during the stay (no access to narcotics, direct supervision, quarterly work and treatment reports).

¹⁵ This assurance is made ever the more necessary by Dr. Van Sistine’s finding that Respondent’s above conduct may have been related to her bifrontal cerebral contusions. *See infra*.

Issue II

As stated in the Conclusions of Law, the burden of proof in this case was on the Division. With respect to this particular issue, this means that the Division had to prove, by the greater weight of the credible evidence, that Respondent committed acts which showed her to be unfit or incompetent to practice nursing by reason of mental incompetency. (See Wis. Stat. § 441.07(1)(c), Conclusions of Law, ¶ 8; *see also* Wis. Admin. Code § N 7.03(3) (defining “mental competency” as being “evidenced by conduct which reflects an impaired ability of the licensee to safely or reliably perform [nursing] duties”), Conclusions of Law, ¶ 9).

With little exception, the conduct alleged by the Division and Ms. Schaefer in ¶¶ 9-23 of the Findings of Fact, above, fails to demonstrate that she has an “impaired ability to safely or reliably perform nursing duties.” While by no means commendable, her conduct merely reflects that she (1) made some angry comments to, and perhaps did not get along well with, her coworkers (including Ms. Schaefer, with whom the tension was obvious), and (2) demonstrated incompetence as a case manager, which Ms. Schaefer herself acknowledged is a very detailed position that not everyone is capable of doing. (See Findings of Fact, ¶ 19). However, the ALJ is not convinced that Respondent’s conduct evinces that she was mentally unfit or incompetent to perform nursing.¹⁶ Indeed, all of the acts cited by Ms. Schaefer as evidence of Respondent’s mental incompetency stemmed from her work as a case manager – a position she had never held before and was expected to learn on the job. (Findings of Fact ¶¶ 14, 20). Ms. Schaefer admitted that Respondent was competent in her private nursing duties, as did the patient she cared for, and that patient’s mother. (See Findings of Fact, ¶¶ 15, 18). While the Division attempted to explain this away as by asserting that (1) no problems were noticed before Respondent became a case manager because she was not as accessible by her supervisor in the field, and (2) that one did not need to be a nurse to care for the tetraplegic patient she cared for (10/27 Tr. pp. 217-218), the ALJ does not believe the timing of Respondent’s noted “incompetency” is a coincidence. If Respondent truly had significant behavior and memory problems, they would have surfaced in the field, prior to her becoming a case manager. Rather, Respondent’s complimentary performance as a home health nurse, coupled with her performance at this hearing, demonstrate that she has no significant cognitive problems, as noted by Dr. Chinnery. (See Findings of Fact, ¶¶ 5, 7).

There is one finding that gives the ALJ pause, however. As noted by the Division, Dr. Van Sistine suggested that Respondent’s brain injury “clearly may have affected her judgment and reasoning skills, possibly playing a role in [her decision to steal prescription pads from her place of employment and forge prescriptions for Percocet].”¹⁷ (Findings of Fact ¶ 6, State’s

¹⁶ While the Division points out that case management is the practice of nursing *per* Wis. Stat. § 441.001(4)(d)(*supra*), there are many other ways to practice nursing as well, at least one of which Respondent has shown competence in.

¹⁷ Respondent’s other alleged instances of “poor judgment,” in (1) changing a doctor’s order for clozapem “for pain,” to “for anxiety,” (which the Respondent claimed there was an order for), (2) changing a doctor’s order from 325 mg of aspirin daily (daily regimen) to 81 mg of aspirin daily (what used to be the standard for daily regimen), and (3) failing to report that she spilled what she claims was 7-10 cc of Roxicet, while questionable, do not evince

Exhibit 6). While this suggestion was most likely authored to aid Respondent in her criminal proceedings, and does not definitively prove that Respondent has (or has demonstrated) an impaired ability to perform nursing duties, it is a cause for concern. Because the above is asserted as a possible reason for Respondent's decision to steal prescription pads and forge prescriptions for Percocet, the substance of the violations in Count I, the ALJ finds that Respondent's discipline for those violations shall include a fitness to practice examination. Such is incumbent for public protection.

Issue III

On the evidence presented, it is more likely than not that Respondent's attorney sent her the Division's September 9, 2010, letter, asking whether she had worked as a nurse since February 2009; reviewed that letter with her in his office on September 17, 2011; and specifically inquired as to whether she had been employed as a nurse since February 2009. (Findings of Fact ¶¶ 27-30). It is also more likely than not that Respondent understood that she was being asked whether she had worked as a nurse since February of 2009, and misrepresented that she had not to both her attorney and the Division. Her excuse that her attorney did not ask her about her employment, which morphed into an excuse that he did not ask her where she was employed or whether she was employed as a nurse (Findings of Fact ¶ 33), is just not credible when one considers that her attorney also sent the Division's September 9, 2011, letter to her¹⁸, and would have no reason not to ask her whether she was employed as a nurse since February 2009, in light of his ethical obligations as an attorney.

Wis. Admin. Code § N 7.04 (intro) 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."

While it is not evident why Respondent misrepresented that she was not working as a nurse when, in fact, she was (there is no evidence in the record that Respondent was ever made aware that that the Division would pursue a summary suspension of her nursing license if she did), her evasive and contradictory testimony (*see* Findings of Fact ¶¶ 34, 36) indicates that she was attempting to cover-up what she had done, and thus, on some level, knew that the Division did not want her to be practicing nursing.

This leads the ALJ to believe that Respondent's misrepresentation was clearly intentional, and as such, inconsistent with Wis. Admin. Code § N 7.04 (intro). Minimum standards provide that licensees be candid with the Board, so they can assess whether they pose a danger to the public.

mental impairment. If anything, the last (failure to document Roxicet spill) evinces diversion, which other evidence in the record debunks. (*See* Findings of Fact, ¶ 12).

¹⁸ She conveniently cannot recall whether she received it.

As discipline for the above conduct, the Division recommends revocation of Respondent's license. (Tr. p. 22). In support of its recommendation, it argues that the Board of Nursing can no longer trust Respondent.

The ALJ disagrees with this recommendation. Indeed, there have been many instances in which a Respondent misrepresents her conduct to the Board (some of which is far more egregious than in the instant case, where the Respondent was merely working) – namely, every contested case in which the Division prevails. While the Division has often argued that that Respondent has lied, it has never asked for revocation on those grounds. (*See In re Disciplinary Proceedings Against Christele Williams* (2011) and *In re Disciplinary Proceedings Against Zetisha Kayde* (2011)). Absent any more convincing reason that revocation is appropriate, and for the reasons discussed in the proceeding two sections, the ALJ believes that the appropriate discipline in this case, as in *Williams and Kayde*, is an indefinite suspension of not more than five years, with an opportunity to stay that suspension after six months if certain conditions are met. (*See Id.*). At most, Respondent should be made to take continuing education courses in ethics, especially as they pertain to her license.

Assessment of Costs

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 are 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 Safety and Professional Services 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.

See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz (LS 0802183 CHI).

Respondent Seidlkaster participated in these proceedings. She admitted one count, one count was not proven, and with respect to the final count, she was found to have perpetuated a lie to both the Division and the tribunal.

Balancing these factors against the seriousness of her misconduct, the undersigned ALJ finds that the respondent should pay 2/3 of the costs involved in investigating and prosecuting this matter.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of the Respondent, Patricia A. Seidlkaster, formerly Patricia Seidl, to practice nursing in the State of Wisconsin be and is hereby **SUSPENDED FOR AN INDEFINITE PERIOD OF TIME**.

The suspension on Respondent Seidlkaster's license will continue until she provides the Board with proof that she has been assessed as safe to practice by a qualified psychologist who has been approved in advance by the Board, and has shown at least six months of compliance with drug counseling, and if necessary, treatment and testing. At that time, Respondent Seidlkaster's license suspension may be stayed. Any additional details involved in this process are to be determined by the Board.

IT IS FURTHER ORDERED that Respondent Seidlkaster shall pay 2/3 of the 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 Safety and Professional Services and sent to:

Department Monitor
Department of Safety and Professional Services
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 Patti A. Seidlkaster.

Dated at Madison, Wisconsin on November 22, 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 /s/
Amanda Tollefsen
Administrative Law Judge