

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The  
State Of Wisconsin  
**BOARD OF NURSING**

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In the Matter of the Disciplinary Proceedings  
Against **LAURIE L. KRUEGER, R.N.**,  
Respondent

FINAL DECISION AND ORDER

**ORDER 0001310**

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Division of Enforcement Case No. 10 NUR 131

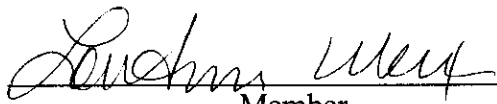
The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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

  
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Member  
Board of Nursing



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

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In the Matter of the Disciplinary Proceedings  
Against **LAURIE L. KRUEGER, R.N.**,  
Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. SPS-11-0086

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**Division of Enforcement Case No. 10 NUR 131**

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

Laurie L. Krueger  
3857 East Tyler Drive  
Oak Creek, WI 53154

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

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

Attorney Chad W. Koplien  
Department of Safety and Professional Services  
Division of Enforcement  
P. O. Box 8935  
Madison, WI 53708-8935

**PROCEDURAL HISTORY**

These proceedings were initiated when the Department of Safety and Professional Services, Division of Enforcement (the Division), filed a formal Complaint against Respondent Laurie L. Krueger, alleging that Respondent Krueger's license was subject to disciplinary action

pursuant to Wis. Stat. § 441.07(1)(c) and (d),<sup>1</sup> and Wis. Admin. Code § N 7.03(2).<sup>2</sup> The Division filed the Complaint with the Division of Hearings and Appeals on September 1, 2011, and, on that same date, sent a copy of the Complaint and a Notice of Hearing via both regular and certified mail to Respondent at her most recent address on file with the Division, 3857 E. Tyler Dr., Oak Creek, WI 53154. The Notice of Hearing stated that Respondent 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.” On or about September 7, 2011, the copy of the Notice of Hearing and Complaint were returned to the Division, with documentation from the U.S. Postal Service stating, “Refused.”

To date, no Answer has been filed.

On September 26, 2011, the 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 and Attorney Chad Koplien of the Division for October 10, 2011. This Notice instructed Respondent to contact the ALJ to provide the telephone number for which she could be reached for the October 10, 2011 telephone conference, and was sent to the address on file for Respondent, as provided above.

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<sup>1</sup> Wisconsin Stat. § 441.07(1)(c) and (d), state, in relevant part:

**Revocation.**

(1) The board may, after disciplinary proceedings conducted in accordance with rules promulgated under s. 440.03 (1), revoke, limit, suspend or deny renewal of a license of a registered nurse, a nurse-midwife or a licensed practical nurse, may revoke, limit, suspend or deny renewal of a certificate to prescribe drugs or devices granted under s. 441.16, or may reprimand a registered nurse, nurse-midwife or licensed practical nurse, if the board finds that the person committed any of the following:

...

(c) Acts which show the registered nurse, nurse-midwife or licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.

(d) Misconduct or unprofessional conduct.

As used in Wis. Stat. § 441.07(1)(d), “misconduct or unprofessional conduct” is defined 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.” Wis. Admin. Rule § N 7.04. “Misconduct or unprofessional conduct” includes, *inter alia*: “Violating . . . any law substantially related to the practice of professional or practical nursing,” Wis. Admin. Code § N 7.04 (1), and “Obtaining or attempting to obtain any compensation by fraud, misrepresentation, deceit or undue influence in the course of nursing practice.” Wis. Admin. Code § N 7.04(13).

<sup>2</sup> Wisconsin Admin. Code § N 7.03(2) states:

**Negligence, abuse of alcohol or other drugs or mental incompetency.**

(2) “Abuse of alcohol or other drugs” is the use of alcohol or any drug to an extent that such use impairs the ability of the licensee to safely or reliably practice.

Respondent did not contact the ALJ with a telephone number at which she could be reached for the October 10, 2011, telephone conference, and the telephone conference that was conducted on that date was without Respondent's participation.

At the October 10, 2011 conference, Attorney Koplien moved for default judgment pursuant to Wis. Admin. Code § SPS 2.14. The ALJ summarily accepted Attorney Koplien's default motion and issued a Notice of Default instructing Respondent 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 ALJ with the Division's written recommendations for discipline and the assessment of costs in this matter by October 14, 2011. The Notice was mailed to Respondent at the address provided above. Attorney Koplien provided the ALJ with the Division's written recommendations as to discipline and costs on October 11, 2011.

Respondent has failed to respond to either the Notice of Default issued against her or the written recommendations provided by the Division.

### **FINDINGS OF FACT**

1. Respondent is licensed as a professional nurse in the State of Wisconsin (license no. 134585-30). This license was first granted on March 24, 2000.
2. From March 22, 2009 to May 22, 2009, Respondent worked as a contract in-home nurse, caring for 3-year-old JH.
3. During a work shift in May 2009, JH's mother observed Respondent acting in an impaired manner. On May 22, 2009, JH's family terminated Respondent's employment because of Respondent's impaired behavior.
4. Upon review of Respondent's work calendars, it was discovered Respondent was recording 12-hour shifts and often five days per week on her work schedule for reimbursement. According to JH's parents, Respondent never worked more than nine hours per day and never worked five days per week. Respondent consistently submitted billing to Wisconsin Medicaid seeking reimbursement for 12-hour shifts and five days per week. Respondent also continued to bill Medicaid until September 2009, despite her employment termination in May 2009.
5. On August 12, 2009, Respondent rear-ended another vehicle. Respondent was noted to have stumbled out of her vehicle, slurring her speech and not following deputies' directions. Respondent told the deputy she was on her way home from work and she had taken a Zoloft® earlier that morning. Respondent denied taking any other prescription medications. The deputy searched Respondent's purse and found a bottle of tramadol. Respondent then admitted to taking two tramadol at approximately 10:00 a.m. During a field sobriety test, Respondent told the deputy she took Benadryl® pills for seasonal allergies at approximately 3:00 p.m.

6. Respondent was transferred to the emergency room for examination. Respondent stated to the emergency room physician she had taken Flexeril® (cyclobenzaprine), Zoloft®, Ultram® (tramadol), Benadryl®, and Soma®(carisoprodol). The emergency room physician told the deputy that any combination of Benadryl®, Soma® and Flexeril® would reduce Respondent's alertness.

7. Respondent was arrested for operating while intoxicated and cited for inattentive driving and for operating while intoxicated. Respondent underwent a legal blood draw and completed an Alcohol/Drug Influence Report, in which she reported she took Zoloft®, tramadol, Benadryl®, and Soma® in the last 24 hours. Respondent's blood draw analysis revealed the following results:

- a. Butalbital – 6.9 mcg/mL, therapeutic range 1-5 mcg/mL;
- b. Ibuprofen – present;
- c. Carisoprodol – 1.8 mcg/mL, therapeutic range 1-5 mcg/mL;
- d. Meprobamate – 22.5 mcg/mL, therapeutic range 5-20 mcg/mL;
- e. Tramadol – 500 ng/mL, therapeutic range 100-300 ng/mL;
- f. Diazepam - <10 ng/mL, therapeutic range 100-1000 ng/mL; and
- g. Nordiazepam – present.

8. On June 7, 2010, Respondent was convicted of operating while under the influence in Kenosha County Circuit Court.

### **CONCLUSIONS OF LAW**

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. §§ 441.07 and 441.50(3)(b).

2. Wisconsin Stat. § 440.03(1) provides that the Department of Safety and Professional Services “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. SPS.

3. Respondent was duly served with the Complaint and Notice of Hearing, Notice of Telephone Prehearing Conference, and Notice of Default pursuant to Wis. Admin. Code § SPS 2.08.

4. Respondent has defaulted in this proceeding pursuant to Wis. Admin. Code § SPS 2.14 by failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § SPS 2.09.

5. Pursuant to Wis. Admin. Code § SPS 2.09, Respondent has admitted to the allegations of the Complaint by not filing an Answer.

6. Respondent also defaulted in this proceeding for her failure to appear at the scheduled prehearing conference after due notice, pursuant to Wis. Admin. Code § HA 1.07(3)(c).

7. Pursuant to Wis. Stat. § 441.07(1)(c) and (d), respectively, the Board of Nursing 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 acts which show her to “be unfit or incompetent by reason of . . . abuse of alcohol or other drugs” or has engaged in “misconduct or unprofessional conduct.”

8. Respondent’s conduct as described in Findings of Fact 3 and 5-8 constitutes “misconduct or unprofessional conduct” and “abuse of alcohol or other drugs” pursuant to Wis. Stat. § 441.07(1)(c) and (d) and Wis. Admin. Code §§ N 7.03(2) and 7.04.

9. Respondent’s conduct as described in Findings of Fact 5-8 constitutes “misconduct or unprofessional conduct” pursuant to Wis. Stat. § 441.07(d) and Wis. Admin. Code § N 7.04(1) as the conduct involves “[v]iolating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing.”

10. Respondent’s conduct as described in Finding of Fact 4 constitutes “misconduct or unprofessional conduct” pursuant to Wis. Stat. § 441.07(d) and Wis. Admin. Code § N 7.04(13) as the conduct involves “[o]btaining or attempting to obtain any compensation by fraud, misrepresentation, deceit or undue influence in the course of nursing practice.”

11. Based on the Findings of Fact and Conclusion of Law above, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07.

## **DISCUSSION**

### **Violations of Wisconsin Statute and Administrative Code**

By failing to provide an Answer to the Complaint filed against her, Respondent has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § SPS 2.09. As such, it is undisputed that Respondent: (1) was observed to be impaired while providing care to a three year-old in May of 2009 during her work shift; (2) rear-ended another vehicle while driving under the influence of the substances set forth in Finding of Fact 7, for which she was convicted on June 7, 2010, in Kenosha County Circuit Court; and (3) billed Medicaid for hours for which she did not work, as set forth in Finding of Fact 4.

Such conduct clearly violates Wis. Stat. § 441.07(1)(c) and (d) and Wis. Admin. Code §§ N 7.03 and 7.04. Respondent is therefore subject to discipline pursuant to Wis. Stat. § 441.07. The only question that remains is what kind of discipline is appropriate.

### Appropriate Discipline

The Division of Enforcement requests that Respondent's license be revoked. In support of this recommendation, the Division argues that Respondent did not answer the Complaint or otherwise appear in these proceedings. The Division states that although the Nursing Board often allows nurses to work under a stayed suspension in diversion cases while receiving drug treatment, Respondent is clearly not ready to obtain treatment or comply with any kind of testing regime, as she was offered this option by stipulation, and did not respond.

The Division further notes that, pursuant to Wis. Stat. § 441.07(2), after one year the Board may reinstate the revoked license. In the event Respondent successfully addresses her drug dependency issues, she can reapply for licensure after a year. This discipline will be on record, so the Board will have the option of offering her a limited license with drug testing at that time.

In the absence of any argument from Respondent, the undersigned ALJ believes the discipline recommended by the Division is appropriate.

The three purposes 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). Respondent's above-noted conduct evinces that she has a serious drug problem. If left untreated, Respondent's drug problem poses a significant danger to the public she serves (her patients) and to the public at large, as demonstrated by Respondent's conviction for operating under the influence. Her unwillingness to participate in these proceedings strengthens the concern that Respondent is not yet rehabilitated. In addition, Respondent's billing Medicaid for hours she did not work further demonstrates her disregard for the public and her untrustworthiness in her profession.

Revoking Respondent's license to practice nursing is thus not only appropriate, it is necessary to protect the public and deter others from such conduct.

### Costs

The Division requests that Respondent 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 stated:

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 [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.

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 [Safety and Professional Services] 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 delineated in the *Buenzli-Fritz* decision, Respondent 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 Safety and Professional Services, fairness dictates imposing the costs of these disciplinary proceedings on Respondent, and not on fellow members of the nursing profession who have not engaged in such conduct.

Payment of assessed costs will be necessary before Respondent’s license can be reinstated pursuant to Wis. Stat. § 441.07(2). If the Board assesses costs against Respondent, these amount of costs will be determined pursuant Wis. Admin. Code § SPS 2.18.

### **ORDER**

For the reasons set forth above, IT IS ORDERED that the license of the Respondent Laurie L. Krueger to practice nursing in the State of Wisconsin be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § SPS 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:

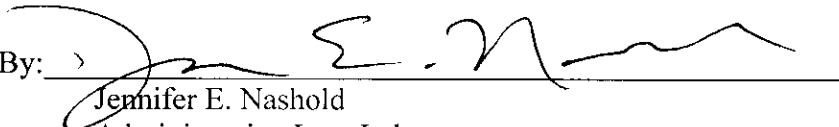
**Department Monitor**  
**Department of Safety and Professional Services**  
**Division of Enforcement**  
**P.O. Box 8935**  
**Madison, WI 53708-8935**  
**Telephone: (608) 267-3817**  
**Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Laurie L. Krueger.

Dated at Madison, Wisconsin on December 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: >

  
Jennifer E. Nashold  
Administrative Law Judge

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