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Before The
State Of Wisconsin
BOARD OF NURSING

In the Matter of the Disciplinary Proceedings
Against **LORETTA J. HILL, L.P.N.**, Respondent

FINAL DECISION AND ORDER

Order No. _____

ORDER 0001385

Division of Enforcement Case No. 10NUR643 and 11NUR151

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 23 day of Feb, 2012.

Member
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings Against
LORETTA J. HILL, L.P.N., Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-11-0062

ORDER 0001385

Division of Enforcement Case Nos. 10 NUR 643 and 11 NUR 151

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

Loretta J. Hill
216 East North Street
Plainfield, WI 54966

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

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

Attorney Jeanette Lytle
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 the Respondent, Loretta Hill. The Division filed said Complaint with the Division of Hearings and Appeals on July 12, 2011. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing to Respondent Hill at her most recent address on file with the Department of Safety and Professional Services; 216 E. North Street, Plainfield, WI 54966. The Notice of Hearing stated that Respondent Hill 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."

The above documents were received at Respondent Hill's above-listed address on or about July 14, 2011.¹ To date, no Answer has been filed.

On August 5, 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 Hill and Attorney Jeanette Lytle of the Division of Enforcement for August 15, 2011. This Notice instructed Respondent Hill to contact the ALJ to provide the telephone number for which she could be reached for the August 15, 2011, telephone conference, and was sent to the address on file for Respondent Hill, as provided above.

Respondent Hill did not contact the ALJ with a telephone number that she could be reached at for the August 15, 2011, telephone conference, and the telephone conference that was conducted on that date was thus without the respondent's participation.

At the August 15, 2011, conference, Attorney Lytle made a motion for default pursuant to Wis. Admin. Code § RL 2.14. The ALJ summarily accepted Attorney Lytle's default motion and issued a Notice of Default instructing Respondent Hill 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 ALJ with the Division's written recommendations for discipline and the assessment of costs in this matter by August 19, 2011. It was again mailed to Respondent Hill at the last address on record for her, 216 E. North Street, Plainfield, WI 54966. Attorney Lytle provided the ALJ with the Division's written recommendations as to discipline and costs on or about August 16, 2011.

Respondent Hill has failed to respond to either the Notice of Default issued against her, or the written recommendations provided by Attorney Lytle on August 16, 2011.

FINDINGS OF FACT

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

1. Loretta J. Hill, L.P.N., (DOB 08/15/1961) was duly licensed as a practical nurse in the State of Wisconsin (license # 31-304613) at all times relevant. This license was first granted on August 14, 2003. It expired on April 30, 2011.²
2. Respondent's most recent address on file with the Wisconsin Board of Nursing is 216 E. North Street, Plainfield, WI 54966.
3. In regards to Case No. 10 NUR 643:

¹ One "Gary Hill" signed a Certified Mail Return Receipt for the above-referenced documents on July 14, 2011.

² Wis. Stat. § 440.08(3) allows holders of expired licenses to renew said licenses upon payment of a fee.

- a. At all times relevant, Respondent was employed as a licensed practical nurse ("LPN") at Strawberry Lane Medical & Rehab in Wisconsin Rapids, Wisconsin.
 - b. On December 19, 2010, Respondent reported to her a.m. work shift smelling of alcohol, having slurred speech and acting belligerently. Respondent told the charge nurse that she drank the night before and into the morning hours. Staff arranged for Respondent's husband to pick her up and Respondent was sent home.
 - c. On December 20, 2010, Respondent met with the administrator and reported that on the night of December 18, she drank until 2:00 a.m., slept for one hour, and then woke up and came to work. Respondent's employment was terminated per facility policy.
4. In regards to Case No. 11 NUR 151:
- a. At all times relevant, Respondent was employed as a LPN at Wild Rose Manor in Wild Rose, Wisconsin.
 - b. On March 30, 2011, Respondent and LPN M.S. were conducting a narcotic count when they noticed a blister card with 30 tablets of Percocet 10/325 mg prescribed to resident A.K. was missing. LPN M.S. called the acting director of nursing (ADON) and notified her about the missing medications.
 - c. The ADON called the facility and spoke to Respondent. The ADON told Respondent she was on her way to the facility and she and LPN M.S. would have to undergo a urine drug screen. When the ADON arrived approximately 25 minutes later, Respondent was gone. A urine drug screen was conducted on LPN M.S. and the results were negative. The ADON reviewed the narcotic log, looked through the medication cart and confirmed resident A.K.'s medication was missing along with the nurse sign-out log. The ADON notified the administrator and the Waushara County Sheriff's Department ("Sheriff's Department").
 - d. A few hours later, the ADON was notified by the Sherriff's Department that Respondent was in custody for theft of missing narcotic medications. The Sherriff's Department obtained resident A.K.'s medication from Respondent as well as a blister pack of Oxycodone 2.5 mg that belonged to resident P.W.
 - e. On March 31, 2011, Respondent was charged in Waushara County Case Number 2011CF000040, with the following:
 - i. Count 1 – Obtain Controlled Substance by Fraud, a class H felony pursuant to Wis. Stat. §§ 961.43(1)(a) and (2); and

ii. Count 2 – Theft-Movable Property-Special Facts, a class H felony pursuant to Wis. Stat. §§ 943.20(1)(a) and (3)(d)6.

5. As set out in the Procedural History above, a Complaint and Notice of Hearing were sent to Respondent Hill at her most recent address on file with the Department of Safety and Professional Services/Wisconsin Board of Nursing on July 12, 2011. Said documents were received at this address on July 14, 2011.

6. On or about August 5, 2011, the undersigned ALJ sent a Notice of Telephone Prehearing Conference for August 15, 2011, to Respondent Hill at the above-listed address.

7. Respondent Hill did not appear at this hearing, and did not file an Answer. The Division thus made a motion for default which was summarily accepted by the ALJ.

8. On or about August 15, 2011, the ALJ sent a Notice of Default to Respondent Hill at her last known address.

9. Respondent Hill 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 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. 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 Hill 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 Hill’s responsibility to keep her address on record with the Department of Safety and Professional Services current. Wis. Stat. § 440.11(1).

5. Respondent Hill 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 Hill has admitted to the allegations of the Complaint by default by not filing an Answer.

7. 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” if the board finds that the registered nurse has engaged in “Acts which show the ... licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.”

8. Wis. Admin. Code § N 7.03(2) defines “abuse of alcohol or other drugs” as “the use of alcohol or any drug to an extent that such use impairs the ability of the licensee to safely or reliably practice.”

9. Respondent Hill’s conduct, as described in ¶ 3 of the Findings of Fact, above, constitutes a violation of Wis. Admin. Code § N 7.03(2), and thus subjects her to discipline pursuant to Wis. Stat. ¶ 441.07(c).

10. 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” if the board finds that the registered nurse has engaged in “Misconduct or unprofessional conduct.”

11. 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.”

12. Wis. Admin. Code § N 704(1) further defines “misconduct or unprofessional conduct” to include: “Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing.”

13. Wis. Admin. Code § N 704(2) further defines “misconduct or unprofessional conduct” to include: “Administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law.”

14. Respondent Hill’s conduct, as described in Findings of Fact ¶ 4, constitutes a violation of Wis. Admin. Code §§ N 7.04(1) and (2), and subjects the respondent to discipline pursuant to Wis. Stat. § 441.07(d).

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against her, Respondent Hill has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that Respondent Hill: (1) admittedly came to work approximately one hour after she had stopped drinking alcohol – in an obviously inebriated condition; and (2) was found with two different residents from a different facilities' narcotics, and arrested and charged with their theft, hours after the narcotics were noted to be missing and Respondent Hill was asked to take a urine drug screen. Such conduct clearly violates Wis. Admin. Code §§ N. 7.03(2), 7.04(1), and N 7.04(2). (See Conclusions of Law). Respondent Hill is thus subject to discipline pursuant to Wis. Stat. § 441.07(1)(a) and (d). The only question that remains is what kind of discipline is appropriate.

Appropriate Discipline

As discipline for her above conduct, the Division requests that the Board revoke Respondent Hill's right to renew her expired license upon payment of a fee pursuant to Wis. Stat. § 440.08(3). In support of this recommendation, it argues that:

The three goals of discipline are to: (1) promote the rehabilitation of the licensee; (2) protect the public from other instances of misconduct; and (3) deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). 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. However, Ms. Hill has let her license expired and has not participated in the hearing process. She is clearly not interested in continuing to work as a nurse at this time. Therefore, the Division of Enforcement recommends that Ms. Hill's right, pursuant to Wis. Stat. 440.08 (3), to renew her license upon payment of a fee be revoked. Revocation of her right to renew would protect the public and deter other licensees from engaging in similar conduct. If Ms. Hill becomes amenable to rehabilitation in the future, she can reapply through the regular application process rather than the expedited process of Wis. Stat. § 440.08(3), and the board can determine whether to grant a license at that time.

(Written Recommendations for Discipline and the Imposition of Costs, filed August 16, 2011).

In light of the limited discipline alternatives available, the ALJ finds the discipline recommended by the Division to be appropriate. Indeed, Respondent Hill's conduct shows that she has a serious drug and alcohol problem, from which she has not yet rehabilitated. Revoking her right to renew her license is thus not only appropriate, but necessary to protect the public and deter others from conducting themselves in a similar fashion.

Costs

The Division requests that Respondent Hill be ordered to pay the full costs of its investigation and of these proceedings. (Written Recommendations for Discipline and the Imposition of Costs, filed August 16, 2011).

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 [now, 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 Regulation and Licensing [now, 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 as cited in the *Buenzli-Fritz* decision, Respondent Hill should be assessed the full amount of recoverable costs. Her alleged conduct is of a serious nature, 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 again

dictates imposing the costs of disciplining Respondent Hill on Respondent Hill, 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 can reapply for a license. 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 right of Respondent Loretta J. Hill, L.P.N., to renew her expired license to practice nursing in the State of Wisconsin upon the payment of a fee be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent Hill 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 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 Loretta J. Hill.

Dated at Madison, Wisconsin on October 3, 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