

## 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 MELODY K. SCHNEIDER, Respondent

FINAL DECISION AND ORDER  
Order No.  
**ORDER 0001386**

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Division of Enforcement Case No. 11 NUR 027

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.

A large, stylized handwritten signature in black ink, appearing to read "L. J. Miller", written over a horizontal line.

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 **MELODY K. SCHNEIDER**, Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. SPS-11-0082

**ORDER 0001386**

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**Division of Enforcement Case No. 11 NUR 027**

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

Melody K. Schneider  
600 S. Arthur Place  
Kennewic, WA 99336

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 Respondent Melody K. Schneider, alleging that Respondent Schneider's license was subject to disciplinary action pursuant to Wis. Stat. § 441.07(1)(c) and (d), and Wis. Admin. Code §§ N 7.03(2) and

7.04(7).<sup>1</sup> The Division filed the Complaint with the Division of Hearings and Appeals on August 31, 2011, and, on August 31, 2011, 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, 127 Nob Hill Dr., Ephrata, WA 98823-1753. 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.”

To date, no Answer has been filed.

On September 26, 2011, the Administrative Law Judge (ALJ) from the Division of Hearings and Appeals (DHA) issued a Notice of Telephone Prehearing Conference that set a telephone conference with Respondent and the Division’s attorney, Jeanette Lytle, for October 12, 2011. This Notice instructed Respondent to contact the ALJ to provide the telephone number for which she could be reached for the October 12, 2011 telephone conference by October 7, 2011, and was sent to the address on file for Respondent in Ephrata, Washington. The Notice was returned to DHA on September 27, 2011, whereupon DHA sent the Notice to the new address provided by the U.S. Postal Service, 600 S. Arthur Place, Kennewick, WA 99336. The re-sent Notice was subsequently returned to DHA without a forwarding address.

Respondent did not contact the ALJ with a telephone number at which she could be reached for the October 12, 2011, telephone conference, and the telephone conference that was conducted on that date was without Respondent’s participation.

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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(c), “abuse of alcohol or other drugs” is defined in Wis. Admin. Code § N 7.03(2) 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.” As used in Wis. Stat. § 441.07(1)(d), “misconduct or unprofessional conduct” is defined by Wis. Admin. Code § N 7.04 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.” “Misconduct or unprofessional conduct” includes, *inter alia*: “[h]aving disciplinary action through final board adjudication taken against one’s license in another jurisdiction.” Wis. Admin. Code § N 7.04(7).

At the October 12, 2011 conference, Attorney Lytle moved for default judgment pursuant to Wis. Admin. Code § SPS 2.14. The ALJ summarily accepted Attorney Lytle's default motion and issued a Notice of Default on October 12, 2011, 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 Lytle 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 Kennewick, Washington address provided above and was returned to DHA without a forwarding address. Attorney Lytle provided the ALJ with the Division's written recommendations as to discipline and costs on October 14, 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 Melody K. Schneider was formerly licensed as a professional nurse in the State of Wisconsin (license no. 30-160245). This license was first granted on August 10, 2007, and expired on February 28, 2010. Pursuant to Wis. Stat. § 440.08, Respondent may renew her license upon payment of a fee until February 28, 2015.

2. Respondent's most recent address on file with the Wisconsin Board of Nursing is 127 Nob Hill Drive, Ephrata, Washington, 98823-1753.

3. In or about December of 2008, while Respondent was working as a nurse in the State of Washington under a Washington nursing license, her co-workers and patients reported that she was acting erratically. She was ordered to provide a urine sample for drug testing.

4. For nearly two hours, Respondent stalled the laboratory technician, changed restrooms, requested a different observer, and otherwise acted evasively but did not produce a sample. When Respondent finally produced a sample, it was an insufficient quantity and was not within the proper temperature range.

5. The laboratory technician discovered a bag of urine under Respondent's shirt. Respondent asked the technician to test the urine from the bag and to lie for her.

6. The State of Washington suspended Respondent's nursing license, and ordered that prior to reinstatement, Respondent must show evidence of sobriety for at least two years.

### **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 Chapter 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 3-6 above constitutes a violation of Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code §§ N 7.03(2) and N 7.04(7) and subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(c) and (d).

## **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 in 2008, while working as a licensed nurse in the State of Washington, Respondent was observed by her co-workers and patients as acting erratically. She was ordered to provide a urine sample for drug testing. For nearly two hours, Respondent stalled the laboratory technician, changed restrooms, requested a different observer, and otherwise acted evasively but did not produce a sample. When Respondent finally produced a sample, it was an insufficient quantity and was not within the proper temperature range. Respondent then hid a bag of urine under her shirt and asked the technician to test the urine from the bag and to lie for

her. The State of Washington suspended Respondent's nursing license, and ordered that prior to reinstatement, Respondent must show evidence of sobriety for at least two years.

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**

According to the Division, when a nurse diverts medication, the Board typically suspends the nurse's license for an indefinite period, then stays the suspension contingent on AODA treatment, drug testing, and practice restrictions. In the instant matter, however, the Division notes that Respondent has let her license expire and has not participated in the hearing process. The Division states that Respondent is clearly not interested in continuing to work as a nurse in Wisconsin at this time. Therefore, the Division recommends that Respondent's right, pursuant to Wis. Stat. § 440.08 (3), to renew her license upon payment of a fee be revoked. The Division states that if Respondent 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.

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). In addition to the reasons provided by the Division above, I note that Respondent's above-noted conduct evinces that she has a serious drug or alcohol problem. If left untreated, Respondent's problem poses a significant danger to the public she serves (her patients) and to the public at large. Also of grave concern is Respondent's dishonesty, and her attempt to persuade the technician conducting the urinalysis to engage in dishonesty. Notably, the State of Washington has suspended Respondent's nursing license as a result of her conduct. Respondent's unwillingness to participate in these proceedings strengthens the concern that Respondent is not yet rehabilitated.

Revoking Respondent's right to renew her nursing license pursuant to Wis. Stat. § 440.08(3) serves the purposes of rehabilitation, protection of the public and deterrence.

### **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, rather than on her fellow nurses, who would ultimately pay the price through licensing fees if Respondent were not held responsible for her costs.

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, the amount of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.



**ORDER**

For the reasons set forth above, IT IS ORDERED that Respondent's right, pursuant to Wis. Stat. § 440.08 (3), to renew her license upon payment of a fee be **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 Melody K. Schneider.

Dated at Madison, Wisconsin on December 23, 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