

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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

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In the Matter of the Disciplinary Proceedings  
Against **LORI A. PERTTULA, R.N.**, Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. SPS-11-0089

**ORDER 0001440**

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**Division of Enforcement Case No. 11 NUR 196**

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

Lori A. Perttula  
P.O. Box 9  
Palmer, MI 49871-0009

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 Lori A. Perttula, alleging that Respondent Perttula's license was subject to disciplinary action

pursuant to Wis. Stat. § 441.07(1)(c) and Wis. Admin. Code § N 7.03(2).<sup>1</sup> Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09 and failed to appear at the telephonic prehearing conference held before the Division of Hearings and Appeals (DHA) on November 1, 2011. As a result, the Administrative Law Judge (ALJ) granted the Division's motion for default against Respondent, and the Division filed recommendations regarding discipline and costs to be imposed on Respondent. 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. Lori A. Perttula, R.N., is duly licensed in the state of Wisconsin as a registered nurse (License No. 154264-30). This license was first granted on May 2, 2006.

2. Respondent's address of record on file with the Board of Nursing is N3321 Lake Antoine Rd., Iron Mountain, MI 49801.

3. Respondent was also licensed as a registered nurse and a licensed practical nurse in the State of Michigan (R.N. License No. 47-04-235290, L.P.N. License No. 47-03-082547).

4. On May 19, 2009, Respondent was convicted in the 96th Judicial District Court, Marquette County, Michigan, of the misdemeanor of Operating While Impaired by Liquor. Respondent was placed on probation for a period of six months with terms, and was ordered to pay fines, costs and fees.

5. Respondent failed to notify the State of Michigan Department of Community Health of her conviction within 30 days of the date of conviction.

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<sup>1</sup> Wisconsin Stat. § 441.07(1)(c) states, 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.

As used in Wis. Stat. § 441.07(1)(c), the phrase "abuse of alcohol or other drugs" is defined 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." Wis. Admin. Code § N 7.03(2).

6. On September 23, 2009, Respondent was terminated from employment as a nurse with Dickinson County Healthcare System (Facility) in Iron Mountain, Michigan. The cause for termination was Respondent testing positive at work for alcohol. Respondent's termination was reported to the State of Michigan Department of Community Health and, in lieu of pursuing disciplinary action, Respondent was referred to the Health Professional Recovery Program (HPRP).
7. On October 22, 2009, Respondent underwent an intake interview with HPRP and admitted to drinking half a fifth of rum into the early morning, prior to her testing positive for alcohol at the Facility.
8. On January 23, 2010, Respondent underwent an evaluation and was diagnosed with alcohol dependence.
9. On February 25, 2010, Respondent entered into a three-year non-disciplinary HPRP monitoring agreement which required her to abstain from alcohol and all mood-altering substances, and to submit to random urine drug tests.
10. On April 2, 2010, Respondent tested positive for ethyl glucuronide (EtG). HPRP notified Respondent's therapist who stated she had had no contact with Respondent since her evaluation.
11. On April 28, 2010, as a result of Respondent's relapse and failure to submit required reports, HPRP closed Respondent's file and mailed Respondent a closure letter and Step 1 Review due May 13, 2010.
12. On May 19, 2010, HPRP approved Respondent's Step 1 Review and entered into a Last Chance Agreement with Respondent.
13. Between May 26, 2010 and July 12, 2010, Respondent failed to contact the approved drug testing facility on five occasions resulting in her account being placed on hold.
14. On July 22, 2010, Respondent tested positive for EtG. As a result, HPRP closed Respondent's file and mailed Respondent a closure letter and a Step 1 Review due August 26, 2010.
15. On September 2, 2010, after a request for a Step 1 Review by Respondent, HPRP upheld its decision to close Respondent's file as non-compliant.
16. On November 5, 2010, after a Step 2 Review, the Health Professional Recovery Committee upheld the initial decision to close Respondent's file as non-compliant and the HPRP forwarded it to the State of Michigan Department of Community Health for disposition.
17. On March 3, 2011, Respondent's license to practice as a registered nurse and license to practice as a licensed practical nurse in the State of Michigan were summarily suspended by the Disciplinary Subcommittee of the Michigan Board of Nursing for evidence of

Public Health Code violations including: conduct, practice or condition which impairs, or may impair, the ability to safely and skillfully practice in the health profession; substance abuse; a mental or physical inability reasonably related to and adversely affecting Respondent's ability to practice in a safe and competent manner; and failure to notify the State of Michigan Department of Community Health of Respondent's convictions within 30 days of the date of convictions.

18. With respect to the matter in this case, the Division filed a Complaint with DHA on September 22, 2011, alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 441.07(1)(c) and Wis. Admin. Code § N 7.03(2). On September 21, 2011, the Division sent a copy of the Complaint and a Notice of Hearing via both regular and certified mail to Respondent at her most recent address of record with the Division, N3321 Lake Antoine Rd., Iron Mountain, MI 49801, and to her last known address of P.O. Box 9, Palmer, MI 49871.

19. 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 September 23, 2011, an individual by the name of Richard Lehto signed the certified mail receipt acknowledging delivery to the Palmer, MI address. On October 5, 2011, an individual by the name of Steven Bernards signed the certified mail receipt acknowledging delivery to the Iron Mountain, MI address.

20. To date, no Answer has been filed.

21. On October 20, 2011, the ALJ issued a Notice of Telephone Prehearing Conference that set a telephone conference with Respondent and Attorney Chad Koplien of the Division for November 1, 2011. This Notice instructed Respondent to contact the ALJ to provide the telephone number for which she could be reached for the November 1, 2011 telephone conference. Although the notice was sent to the Iron Mountain, MI address, it was forwarded by the U.S. Postal Service to the Palmer, MI address, as indicated by Form 3547 from the U.S. Postal Service received by DHA on November 9, 2011, which indicates Respondent's change of address from the Iron Mountain, MI address to the Palmer, MI address.<sup>2</sup>

22. Respondent did not contact the ALJ with a telephone number at which she could be reached for the November 1, 2011 telephone conference, and the telephone conference that was conducted on that date was without Respondent's participation.

23. At the November 1, 2011 conference, Attorney Koplien moved for default judgment pursuant to Wis. Admin. Code § SPS 2.14. The ALJ summarily accepted Attorney

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<sup>2</sup>The Notice of Prehearing Conference was sent to Respondent on October 20, 2011; therefore, it is likely that it was forwarded to Respondent's Palmer, MI address prior to the November 1, 2011 conference. However, even if Respondent did not receive the Notice until after the November 1, 2011 conference, Respondent never contacted the ALJ or DHA to request another opportunity to appear before DHA to respond to the complaint and never notified DHA of a change of address.

Koplien's default motion and, on November 1, 2011, 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. The Notice was mailed to Respondent at the Palmer, MI address provided above. Attorney Koplien provided the ALJ with the Division's written recommendations as to discipline and costs on November 16, a copy of which was sent to Respondent at the Palmer, MI address.

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

### **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 pursuant to Wis. Admin. Code § SPS 2.08 and was also served with the Notice of Telephone Prehearing Conference and Notice of Default.

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), 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."

8. Respondent's conduct as described in Findings of Fact 6-8, above, constitutes abuse of alcohol or other drugs in violation of Wis. Stat. § 441.07(1)(c) and Wis. Admin. Code § N 7.03(2), and subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(c).

## **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 the following events occurred. Respondent's license was summarily suspended by the Michigan Board of Nursing in March 2011 for non-compliance with the Michigan Health Professional Recovery Program. Respondent entered the HPRP following the termination of her employment from a facility, which resulted from her testing positive for alcohol while at work. Respondent admitted to the HPRP that she drank half a fifth of rum into the early morning prior to her testing positive for alcohol at the facility. In January 2010, Respondent was diagnosed with alcohol dependence.

On February 25, 2010, Respondent entered into a three-year non-disciplinary HPRP monitoring agreement that required Respondent to abstain from alcohol and all mood-altering substances, and submit to random urine drug tests. In April 2010, Respondent tested positive for EtG, which indicates alcohol use. Due to Respondent's relapse and failure to submit required reports, the HPRP closed Respondent's file and mailed her a closure letter and Step 1 Review. The HPRP approved Respondent's Step 1 Review and entered into a Last Chance Agreement with Respondent. Between May 26, 2010 and July 12, 2010, Respondent failed to contact the approved drug testing facility on five occasions. On July 22, 2010, Respondent tested positive for EtG. As a result, the HPRP closed Respondent's file. On November 15, 2010, the Health Professional Recovery Committee upheld the decision to close Respondent's file as non-compliant and the HPRP forwarded it to the State of Michigan Department of Community Health for disposition, which resulted in the summary suspension of her license.

Respondent's conduct constitutes abuse of alcohol or other drugs in violation of Wis. Stat. § 441.07(1)(c) and Wis. Admin. Code § N 7.03(2), and subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(c).

### **Appropriate Discipline**

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, 237 N.W.2d 689 (1976).

The Division requests that Respondent's license be revoked. Alternatively, if revocation is rejected, the Division requests an indefinite suspension for a minimum of five years, with drug treatment, testing, and work restrictions which the Division does not specify.



The record demonstrates that revocation is warranted here. I agree with the Division that although the Board often allows nurses to work under a stayed suspension in substance abuse cases while receiving AODA treatment, Respondent is clearly not ready to comply with treatment requirements or any kind of testing regime, as demonstrated by the facts set forth above. In addition, the Division states that she was offered such an option by stipulation, and did not respond. Respondent's above-noted conduct evinces that she has a serious alcohol problem and that when offered opportunities to comply with treatment regimes, she is unsuccessful or unresponsive. Respondent's alcohol problem poses a significant danger to the public she serves (her patients), as demonstrated by Respondent's ingestion of a half of fifth of rum in the morning of a work shift. Her unwillingness to participate in these proceedings strengthens the concern that Respondent is not yet rehabilitated and is disinterested in or incapable of rehabilitation. 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.

I note that, pursuant to Wis. Stat. §441.07(2), after one year, the Board may reinstate the revoked license. In the event Respondent becomes able to address her alcohol 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.

### 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, 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 the license of the Respondent Lori A. Perttula 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 Lori A. Perttula.

Dated at Madison, Wisconsin on January 26, 2012.

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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