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Before The
State Of Wisconsin
VETERINARY EXAMINING BOARD

In the Matter of the Disciplinary Proceedings
Against **AARON T. SCOFIELD, C.V.T.**,
Respondent

FINAL DECISION AND ORDER

Order No.

ORDER 0002 00

Division of Enforcement Case No. 11 VET 040

The State of Wisconsin, Veterinary Examining Board, 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, Veterinary Examining Board.

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 24 day of October, 2012.

Member
Veterinary Examining Board



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

In the Matter of the Disciplinary Proceedings
Against **Aaron T. Scofield, C.V.T.**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-12-0019
ORDER 0002 00

Division of Enforcement Case No. 11 VET 040

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

Aaron T. Scofield
801 E. Harrison St., Apt. 204
Seattle, WA 98102-5450

Wisconsin Veterinary Examining Board
P.O. Box 8935
Madison, WI 53708-8935

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

Attorney James E. Polewski
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 Aaron T. Scofield, alleging that Respondent Scofield's license was subject to disciplinary action pursuant to Wis. Stat. § 453.07 and Wis. Admin. Code § VE 9.05(5). Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09, and failed to appear at a scheduled telephonic prehearing conference held on March 9, 2012. Consistent with a March 28, 2012 Order Setting Briefing Schedule, on March 29, 2012 the Division filed a motion for default and affidavit in support thereof as well as a memorandum on discipline and a draft Proposed Decision and Order. Respondent has failed to file a brief in response to the motion for default as required by the briefing order.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of Fact 1-7 are taken from the Division's Complaint against Respondent filed in this matter.

1. Aaron T. Scofield, C.V.T. (Respondent) was born on April 25, 1985, and is licensed to practice as a certified veterinary technician in the state of Wisconsin pursuant to license number 9901777-51. This license was first granted on April 4, 2007.

2. At all times relevant to this proceeding, Respondent was working as a certified veterinary technician at the Center for Bird & Exotic Animal Medicine in Bothell, Washington.

3. From September 6, 2011, through September 22, 2011, Respondent took approximately twenty-two 1 ml. vials of the Schedule II controlled substance oxymorphone 1 mg./ml. from the Center for Bird & Exotic Animal Medicine's controlled drug cabinet for his own personal use.

4. On September 23, 2011, Respondent tested positive for oxymorphone during an employer-mandated reasonable suspicion drug test.

5. Respondent was the lead technician at the facility and was in charge of reconciling the controlled drug counts on a daily basis. Respondent admitted that he altered and falsified the computer patient medical records of at least eight patients and the handwritten controlled drug logbook entries to show that the patients had received oxymorphone, when in fact they had not, in an attempt to conceal his theft.

6. Respondent admitted that he had taken the oxymorphone from the facility and had injected himself with the drug on multiple occasions.

7. Respondent admitted that before he moved to Seattle, Washington, he also diverted controlled narcotics from several Wisconsin veterinary facilities where he had previously worked as a veterinary technician.

Facts Related to Default

8. The Complaint and Notice of Hearing in this matter were served on Respondent on February 27, 2012, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing stated that Respondent was required to file an Answer to the Complaint within 20 days, failing which "[he would] be found to be in default, and a default judgment may be entered against [him] on the basis of the Complaint and other evidence and the Veterinary Examining Board may take disciplinary action against [him] and impose the costs of the investigation, prosecution and decision of this matter upon [him] without further notice or hearing."

9. At some point prior to March 23, 2012, the Notice of Hearing and Complaint were returned to the Division by the U.S. Postal Service, with a label stating that Respondent had a new address, 801 E. Harrison Street, Apt. 204, Seattle, WA 98102. However, mail sent by the Division to Respondent at the Harrison Street address was returned by the U.S. Postal Service, with a label reading "Return to Sender Attempted – Not Known Unable to Forward."

10. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

11. Following expiration of the 20-day time period to file an Answer, the Administrative Law Judge (ALJ) scheduled a telephone prehearing conference for March 28, 2012. The March 19, 2012 Notice of Telephone Prehearing Conference was sent to the Plainfield Avenue address in Milwaukee and stated: "A respondent's failure to appear at a scheduled conference may result in default judgment being entered against the respondent." The Notice further informed Respondent that he must contact the ALJ no later than March 23, 2012, to provide a telephone number for which he could be reached for the March 28, 2012 prehearing conference.

12. The Notice was returned to the Division of Hearings and Appeals (DHA) on March 23, 2012 with a change of address to the Harrison Street in Seattle. The Notice was then sent to the Harrison St. address in Seattle and returned to DHA on April 2, 2012, with a label reading, "Return to Sender Attempted – Not Known Unable to Forward."

13. Respondent failed to provide a telephone number at which he could be reached for the prehearing conference as required by the March 19, 2012 Notice and failed to make himself available for the March 28, 2012 conference.

14. A Telephone Status Conference was held on March 28, 2012, at which Respondent failed to make himself available because he failed to provide a phone number for which he could be reached. As a result, counsel for the Division indicated he would file a motion for default.

15. On March 28, 2012, the ALJ issued a briefing order under which the parties were ordered to file their motions and briefs as follows: the Division's motion for default and supporting brief were due no later than April 6, 2012; Respondent's response was due no later than May 7, 2012; and the Division's reply brief, if any, was due no later than May 14, 2012. The briefing order was sent to Respondent's last known address on Harrison Street in Seattle but was returned to the DHA by the U.S. Postal Service on April 6, 2012, with a label reading, "Return to Sender Attempted – Not Known Unable to Forward."

16. Based on Respondent's failure to file an Answer to the Complaint in this matter, on March 29, 2012, the Division filed a motion for default and affidavit in support thereof, as well as a memorandum on discipline and a draft Proposed Decision and Order.

17. Respondent failed to file a response brief. As a result, the Division did not file a reply brief.

DISCUSSION AND CONCLUSIONS OF LAW

Default

The Division moves for default based on Respondent's failure to file an Answer to the Division's properly served Complaint and Notice of Hearing. Wisconsin Admin. Code § SPS 2.09(4) states, "An answer to a complaint shall be filed within 20 days from the date of the service of the complaint." "Allegations in a complaint are admitted when not denied in the answer." Wis. Admin. Code § SPS 2.09(3). When a Respondent fails to file an Answer as required, the Respondent "is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence." Wis. Admin. Code § SPS 2.14. Thus, 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(4).

Although not argued by the Division, Respondent is also in default for failing to appear at the telephone prehearing conference scheduled in this matter. Wisconsin Admin. Code § HA 1.07(3) provides, in relevant part:

(3) FAILURE TO APPEAR.

...

(b) If a respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate . . .

(c) For a telephone or video hearing or prehearing the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: (1) The failure to provide a telephone number to the division after it had been requested; (2) the failure to answer the telephone or videoconference line; . . . (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

Pursuant to Wis. Admin. Code § HA 1.07(3)(c), Respondent is in default for failing to be ready to proceed with the prehearing conference as scheduled.

Thus, based on Wis. Admin. Code § HA 1.07(3)(b) and Wis. Admin. Code §§ SPS 2.09(3) and 2.14, Respondent is in default and has admitted to the allegations of the Complaint.

Violation of Wis. Stat. § 453.07(2) and Wis. Admin. Code § VE 9.05

Wisconsin Stat. § 453.07(2) provides that "the examining board may, by order, reprimand any person holding a license, certificate or permit under this chapter or deny, revoke, suspend, limit or any combination thereof, the person's license, certificate or permit if the person has: (a) Engaged in unprofessional conduct."

Wisconsin Admin. Code § VE 9.05 states that the following constitutes unprofessional conduct by a veterinary technician and is prohibited: “(5) The personal use, misuse or sale other than for medical treatment of patients, of drugs listed in the U.S. controlled substances act of 1970, as amended, or ch. 961, Stats., other than drugs prescribed by a physician for use by the veterinary technician.”

Because Respondent has admitted to the allegations contained in the Complaint, it is undisputed that from September 6, 2011, through September 22, 2011, Respondent, a certified veterinary technician, took approximately twenty-two 1 ml. vials of the schedule II controlled substance oxymorphone 1mg./ml. from the controlled drug cabinet of his place of employment, the Center for Bird & Exotic Animal Medicine, in Bothell Washington, for his own personal use and that on September 23, 2011, he tested positive for oxymorphone during an employer-mandated reasonable suspicion drug test.

Moreover, Respondent, who was the lead technician at the facility and was in charge of reconciling the controlled drug counts on a daily basis, admitted that, in an attempt to conceal his theft, he altered and falsified the computer patient medical records of at least eight patients and the handwritten controlled drug logbook entries to show that the patients had received oxymorphone, when in fact they had not. Respondent also admitted that he had taken the oxymorphone from the facility and had injected himself with the drug on multiple occasions and that before he moved to Seattle, Washington, he diverted controlled narcotics from several Wisconsin veterinary facilities where he had previously worked as a veterinary technician.

Respondent's actions constitute unprofessional conduct in violation of Wis. Stat. § 453.07(2) and Wis. Admin. Code § VE 9.05. Respondent used or misused oxymorphone, a schedule II controlled substance, which was not prescribed by Respondent's physician for use by Respondent. Accordingly, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1).

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 recommends that Respondent's license to practice as a certified veterinary technician be indefinitely suspended. Based on the facts of this case, the Division's recommendation is warranted. Respondent repeatedly used his license to obtain a Class II controlled substance for his own personal use and engaged in deceptive practices in order to obtain those substances. In doing so, he compromised his profession and the treatment received by the public he serves. Further, in failing to follow up in any manner regarding this disciplinary proceedings initiated by the Division, Respondent has demonstrated that he does not take his license, these proceedings, or his rehabilitation seriously. Respondent's license should be suspended until the Wisconsin Veterinary Examining Board (the Board) can be sure that Respondent is able and willing to confine the use of his license to proper purposes and until

Respondent can demonstrate to the Board that he may competently and safely practice his profession.

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 respondent's 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 and stated in the disciplinary section above, Respondent should be assessed the full amount of recoverable costs.

Respondent's conduct is of a serious nature, he 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 profession who have not engaged in such conduct.

If the Board assesses costs against Respondent, the amount of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS HEREBY ORDERED that

(1) The license of Respondent Aaron T. Scofield is SUSPENDED indefinitely.

(2) 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**

(3) The above-captioned matter be and hereby is closed as to Respondent Aaron T. Scofield.

Dated at Madison, Wisconsin on July 20, 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