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Before The
State Of Wisconsin
BOARD OF NURSING

In the Matter of the Disciplinary Proceedings
Against **LISA A. FRIEDMAN**, Respondent

FINAL DECISION AND ORDER
Order No. _____

ORDER 0002182

Division of Legal Services and Compliance Case No. 12 NUR 125

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 6th day of December, 2012.

Julia Nelson, RN
Member
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **LISA A. FRIEDMAN**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-12-0054

Division of Legal Services and Compliance¹ Case No. 12 NUR 125

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

Lisa A. Friedman
5280 Valley Forge Road
Ashbury, IA 53002

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

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Aaron A. Konkol
Department of Safety and Professional Services
Division of Legal Services and Compliance
P. O. Box 8935
Madison, WI 53708-8935

PROCEDURAL BACKGROUND

These proceedings were initiated when the Department of Safety and Professional Services, Division of Enforcement (Division), filed a formal Complaint against Respondent Lisa A. Friedman (Respondent), alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(2) and (7). The Division served Respondent on July 9, 2012 by sending a copy of the Notice of Hearing and Complaint to

¹ The Division of Legal Services and Compliance was formerly known as the Division of Enforcement. Because the Division was called the Division of Enforcement at the time of the actions described, it is referred to as such in the procedural history of this decision.

her last known address. 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 on August 13, 2012.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to make herself available for the prehearing conference, the undersigned administrative law judge (ALJ) found Respondent to be in default. On August 13, 2012, the ALJ issued a Notice of Default against Respondent. Consistent with the Notice of Default, the Division filed a written recommendation for discipline and costs to be imposed on Respondent.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of Fact 1-8 are taken from the Division's Complaint against Respondent filed in this matter.

1. Lisa A. Friedman (DOB 10/02/1972) is licensed in the State of Iowa as a professional nurse (license no. 095862). Respondent holds no Wisconsin licensure as a nurse, but is permitted to practice in Wisconsin under her Iowa license pursuant to Wis. Stat. § 441.50, the Nurse Licensure Compact.

2. Respondent's last known address is 5280 Valley Forge Road, Ashbury, IA 53002.

3. At all times relevant, Respondent was employed as a professional nurse at Southwest Health Center in Platteville, Wisconsin.

4. A Pyxis medication distribution report revealed that Respondent dispensed a high volume of Opana (oxymorphone) and Dilaudid (hydromorphone) in a 30-day period.

5. Further investigation showed that between December 1, 2011 – January 31, 2012, Respondent dispensed 130 of 146 units of injectable oxymorphone and injectable hydromorphone from the Pyxis.

6. On February 15, 2012, Respondent underwent a reasonable suspicion drug screen, which was positive for oxymorphone.

7. Respondent's employment at Southwest was terminated for drug diversion.

8. In September 2011, the Arizona Board of Nursing revoked Respondent's license based on allegations that Respondent diverted Demerol (meperidine).

Facts Related to Default

9. The Complaint and Notice of Hearing in this matter were served on Respondent on July 9, 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, and informed Respondent: "If you do not provide a proper Answer within 20 days, you will be found to be in default, and a default judgment may be entered against you on the basis of the Complaint and other evidence and the Wisconsin Board of Nursing may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing."

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 ALJ scheduled a telephone prehearing conference for August 13, 2012. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the telephone number at which she could be reached for the conference to the ALJ no later than August 8, 2012.

12. Respondent failed to provide a telephone number and could not be reached for the prehearing conference.

13. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

14. On August 13, 2012, the ALJ issued a Notice of Default and ordered the Division to serve no later than August 23, 2012: (1) its written recommendation for discipline in this matter

and the reasons supporting that recommendation; and (2) its recommendation as to whether all or part of the costs of this proceeding should be assessed against Respondent and the reasons supporting that recommendation.

15. The Division filed its recommended proposed decision and order, including its written recommendation regarding discipline and costs, with attached exhibits, on August 27, 2012. Respondent filed no response.

DISCUSSION AND CONCLUSIONS OF LAW

Default and Violation of Wis. Stat. § 441.07 (1)(d) and Wis. Admin. Code § N 7.04(2) & (7).

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 provide a telephone number and failing to answer the telephone and be ready to proceed with the prehearing conference as scheduled.

Moreover, Wis. 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.” 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 also defaulted in this proceeding pursuant to Wis. Admin. Code § SPS 2.14 by failing to appear at the prehearing conference and failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § SPS 2.09(4).

Accordingly, pursuant to Wis. Admin. Code §§ HA 1.07(3)(b) and SPS 2.14, Respondent has admitted to the allegations of the Complaint. As such, it is undisputed that while Respondent was employed as a professional nurse at Southwest Health Center in Platteville, Wisconsin, a Pyxis medication distribution report revealed that she dispensed a high volume of Opana (oxymorphone) and Dilaudid (hydromorphone) in a 30-day period. It is also undisputed that between December 1, 2011-January 31, 2012, Respondent dispensed 130 of 146 units of injectable oxymorphone and injectable hydromorphone in a 30-day period, and that on February 15, 2012, Respondent underwent a reasonable suspicion drug screen, which was positive for oxymorphone. Respondent's employment at Southwest was terminated for drug diversion, and in September 2011, the Arizona Board of Nursing revoked Respondent's license based on allegations that Respondent diverted Demerol (meperidine).

Wisconsin Stat. § 441.07(1)(d) provides that the Board may "revoke, limit, suspend or deny renewal of a license of a registered nurse . . . may reprimand a registered nurse . . . if the board finds that the person committed . . . [m]isconduct or unprofessional conduct."

"Misconduct or unprofessional conduct" means "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" and includes "[a]dministering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law," Wis. Admin. Code § N 7.04(2), and "[h]aving disciplinary action through final board adjudication taken against one's license in another jurisdiction." Wis. Admin. Code § N 7.04(7).

Based on the foregoing, Respondent has violated Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(2) and (7) because her conduct constitutes misconduct or unprofessional conduct. She is therefore subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

Appropriate Discipline

The Board has the authority to discipline Respondent in this matter pursuant to Wis. Stat. § 441.07 for the violations discussed above. 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 privilege to practice in the State of Wisconsin pursuant to the Nurse Licensure Compact be revoked. Under the facts of this case, the criteria of *Aldrich*, and a prior Board decision, the discipline recommended by the Division is warranted.

In September, 2011, The Arizona State Board of Nursing revoked Respondent's license based on allegations that Respondent diverted Demerol (meperidine). Clearly, the actions of Respondent constitute unprofessional misconduct as defined by the Board of Nursing Code. Respondent's conduct warranted action by another jurisdiction in order to protect the patients of the State of Arizona. Respondent subsequently was terminated for testing positive for oxymorphone at another healthcare facility.

Respondent clearly has drug dependency issues. If left untreated, Respondent will surely endanger the public she serves. Respondent's actions were highly unethical and created the risk of harm to the public. Respondent's failure to participate at all in these proceedings demonstrates that she has not been rehabilitated. The Division's recommendation protects the public by preventing Respondent from practicing in the immediate future and ensures that she understands the rules governing her profession and that she cannot harm the patients she is charged with serving.

Revocation of the privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact will also serve to deter other license holders from engaging in similar conduct.

Finally, the Board has ordered similar discipline for similar conduct. *See In the Matter of Disciplinary Proceedings Against Krystal A. Bauer, R.N.*, 07NUR448 (June 5, 2008).

Accordingly, it is appropriate to revoke Respondent's privilege to practice in the State of Wisconsin pursuant to the Nurse Licensure Compact.

Costs

The Board has the authority to assess costs pursuant to Wis. Stat. § 440.22. The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings. The factors to be considered in assessing costs are: (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 prosecutor; (4) the respondent's cooperation with the disciplinary process; (5) prior discipline, if any; (6) the fact that the Department 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; and (7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, LS0802183CHI (Aug. 14, 2008).

Most of these factors have been addressed in the disciplinary section of this decision, above. Additionally, although Respondent does not have any prior disciplinary action against her, her conduct was serious, there is no argument that certain factual findings were investigated and litigated unnecessarily and, given the program revenue nature of the Department, 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. Moreover, the Division states that it offered Respondent a stipulation to resolve this matter; however, Respondent failed to respond to the offer. Likewise, Respondent also refused to participate in

the proceedings before the Division of Hearings and Appeals. Based on all of the above, it is appropriate to require Respondent to pay the full costs incurred in this matter.

ORDER

Accordingly, IT IS ORDERED that:

1. The privilege of Respondent Lisa A. Friedman to practice nursing in the State of Wisconsin, pursuant to the Nurse Licensure Compact, is hereby REVOKED.

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 Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

3. The ordered terms of this decision are effective the date the Board signs the final decision in this matter.

Dated at Madison, Wisconsin on October 16, 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