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Before The
State Of Wisconsin
BOARD OF NURSING

In the Matter of the Disciplinary Proceedings
Against **KAY S. WHITE, L.P.N.**, Respondent

FINAL DECISION AND ORDER

Order No. _____

ORDER 0002403

Division of Legal Services and Compliance Case No. 12 NUR 145

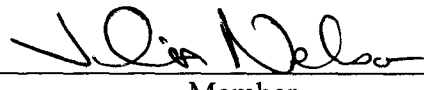

The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 19th day of April, 2013.

Member
Board of Nursing



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

In the Matter of the Disciplinary Proceedings
Against **KAY S. WHITE, L.P.N.**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-12-0053
ORDER 0002403

Division of Legal Services and Compliance¹ Case No. 12 NUR 145

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

Kay S. White
516 W. Main Street, Apt. 1
Stoughton, WI 53589

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 SUMMARY

These proceedings were initiated on July 9, 2012 when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), served a formal Complaint on Respondent Kay S. White, alleging that Respondent White's license was subject to disciplinary action pursuant to Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(12).

Following two telephone prehearing conferences before the undersigned Administrative Law Judge (ALJ) at which the parties appeared, the ALJ scheduled a November 29, 2012 hearing date and related deadlines. On October 8, 2012, the ALJ received an email from the Division's attorney requesting a status conference. The ALJ issued a Notice setting a telephone status conference for October 17, 2012. Respondent failed to appear at the October 17, 2012

¹ The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

status conference. Rather than moving for default at that time, the Division requested that the November 29, 2012 hearing date be converted to a status conference in order for the parties to attempt to settle the matter. The ALJ agreed and cancelled the hearing and set a status conference for November 29, 2012 at 10:00 a.m. Respondent again failed to appear at that conference and the Division moved for default.

On November 29, 2012, the undersigned ALJ issued a Notice of Default against Respondent, to which Respondent did not respond. Consistent with the Notice of Default, on December 13, 2012, the Division filed a recommended proposed decision and order with supporting documents. Respondent did not file a response to the Division's submissions.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of Fact 1-6 are taken from the Division's Complaint against Respondent filed in this matter.

1. Kay S. White, L.P.N., (DOB 01/29/1963) is licensed as a practical nurse in the State of Wisconsin (license no. 311210-31). This license was first granted on May 11, 2009.

2. Respondent's most recent address on file with the Wisconsin Board of Nursing (Board) is 512 Pleasant Valley Drive, Stoughton, Wisconsin 53589.

3. On March 1, 2012, while working as a practical nurse at Nazareth Health and Rehabilitation Center (Center) in Stoughton, Wisconsin, Respondent took a patient's debit card, without the patient's consent, and used it to purchase gasoline for her vehicle.

4. When questioned by the Center and Police, Respondent admitted that she took the debit card out of the patient's purse, which was locked in the narcotics room of the Center, and used it to buy gasoline.

5. Respondent's employment at the Center was terminated.

6. On March 27, 2012, Respondent was charged in Dane County, Case Number 2012CF000564 with one count of Theft-Movable Property-Special Facts, a class H felony, and one count of Misappropriate ID Info-Obtain Money, a class H felony.

7. On October 30, 2012, Respondent was convicted of one count Misappropriate ID Info-Obtain Money, a class H felony in Dane County Case Number 2012CF000564. (Affidavit of Aaron A. Konkol, Exhibit B)

Facts Related to Default

8. 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.

9. The ALJ scheduled a telephone prehearing conference for August 13, 2012. Pursuant to discussions held at that conference, a subsequent prehearing conference was scheduled for

September 14, 2012. Both parties appeared, and a hearing date of November 29, 2012 and related deadlines were scheduled.

10. The Division emailed the ALJ on October 8, 2012 asking for a telephone status conference. The ALJ issued a Notice of Telephone Status Conference on that same date scheduling a telephone status conference for October 17, 2012. The Notice indicated that the purpose of the October 17, 2012 status conference was to discuss the Division's request to change the November 29, 2012 hearing date to a status conference in order to provide the parties with the opportunity to attempt to settle the case in light of pending criminal charges against Respondent. As with prior notices setting telephone conferences in this matter, the October 8, 2012 Notice stated, **"A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent."**

11. Respondent failed to appear at the October 17, 2012 status conference, and instead of moving for default, the Division requested that the November 29, 2012 hearing be converted to an additional status conference.

12. On October 17, 2012, the ALJ issued a Notice of Hearing Cancellation and Telephone Status Conference, changing the November 29, 2102 hearing to a status conference. As with the other notices in this matter, the October 17, 2012 Notice again informed Respondent: **"A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent."**

13. On November 29, 2012, the ALJ attempted to reach Respondent at the telephone number she provided; however, she received a voice mail recording. The ALJ left a voicemail for Respondent informing her that the ALJ would give Respondent 15 minutes to contact her at the phone number provided by the ALJ. Respondent failed to contact the ALJ during that time period and when the ALJ telephoned Respondent again after the 15-minute period, the ALJ again received a voice mail recording.

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

15. On November 29, 2012, the ALJ issued a Notice of Default which directed the Division to serve no later than December 13, 2012 a recommended proposed decision. Respondent did not file any response to the Notice of Default.

16. On December 13, 2012, the Division filed its recommended proposed decision and order including written recommendation regarding discipline and costs, along with supporting documents. Respondent did not file a response to the Division's submission.

DISCUSSION AND CONCLUSIONS OF LAW

Default and Violation of Wis. Stat. § 441.07 (1)(d)

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.

Likewise, Wis. Admin. Code § SPS 2.14 states that a failure to appear results in default. Pursuant to Wis. Admin. Code §§ HA 1.07(3)(c) and SPS 2.14, Respondent is in default for failing to answer the telephone and failing to be ready to proceed with the prehearing conference as scheduled and, as a result, has admitted to the allegations of the Complaint.

As such, it is undisputed that Respondent was employed as a practical nurse at Nazareth Health and Rehabilitation Center in Stoughton, Wisconsin. It is also undisputed that on March 1, 2012, while working as a practical nurse at the Center, Respondent took a patient's debit card, without the patient's consent, and used it to purchase gasoline for her vehicle.

When questioned by the Center and Police, Respondent admitted that she took the debit card out of the patient's purse, which was locked in the narcotics room of the Center, and used it to buy gasoline. Respondent's employment at the Center was terminated. On March 27, 2012, Respondent was charged in Dane County Case Number 2012CF000654 with one count of Theft-Movable Property-Special Facts, a class H felony; and one count of Misappropriate ID Info-Obtain Money, a class H felony. On October 30, 2012, Respondent was convicted of one count Misappropriate ID Info-Obtain Money, a class H felony.

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. . . the board finds that the person committed . . . [m]isconduct or unprofessional conduct."

Wisconsin Admin. Code § N 7.04(12) states: "[M]isconduct 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 "[o]btaining or attempting to obtain anything of value from a patient without the patient's consent."

Based on the foregoing, Respondent has violated Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § NUR 7.04(12) 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 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. *See State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976).

The Division requests that Respondent's license be revoked. Based on the factors set forth in *Aldrich* and the facts of this case, I conclude that such discipline is warranted.

Respondent was convicted of one count Misappropriate ID Info-Obtain Money, a class H felony. Clearly, the actions of Respondent constitute unprofessional misconduct as defined by Wis. Admin. Code § N 7.04(12). Respondent deliberately took the personal property of a resident for whom she was caring and used it for her own personal gain.

As a nurse working in a nursing home and rehabilitation facility, Respondent would have easy access to resident's personal belongings. Respondent would also have access to assets of the facility itself. If Respondent was allowed to continue to practice in another facility similar to that of her prior employer, Respondent would have the opportunity to engage in conduct for which she was convicted. Respondent's actions, her criminal conviction and her failure to continue to participate in these proceedings equates to practice or behavior below minimum standards of the profession necessary for the protection of the health, safety and welfare of a patient or the public.

Respondent's intentional acts and failure to take responsibility for her actions as evidenced by her discontinued participation in these proceedings, demonstrates the need for protecting the public from other instances of misconduct. There is a need to send a strong message to other licensees to deter them from engaging in similar conduct. The public places its trust in its healthcare providers. That level of trust is elevated when a provider cares for the elderly in a residential setting, as such individuals are part of a vulnerable population. When the trust is breached, the license holder fails to practice in a manner which safeguards the interest of the public. Respondent's actions were highly unethical and created the risk of harm to the public.

Revocation of Respondent's license to practice nursing in Wisconsin is appropriate in this matter and will serve to protect the public and ensure that Respondent understands the rules governing her profession. Wisconsin Stat. § 441.07(2) provides that after one year, the Board of Nursing may reinstate the revoked license. At this time, however, Respondent should not be practicing nursing, as evidenced by her actions and her failure to participate in these proceedings. Similar discipline has been ordered by the Board of Nursing for similar conduct. *See In the Matter of Disciplinary Proceedings Against Ruby Swanigan Dukes, R.N.*, LS9605152NUR (January 9, 1997). (Affidavit of Aaron A. Konkol, Exhibit C) Based on the foregoing, it is appropriate to revoke Respondent's license.

Costs

The Board of Nursing has the authority to assess costs pursuant to Wis. Stat. § 440.22. 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).

The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings. The Division states that it offered Respondent a stipulation to resolve the Complaint and that Respondent did not accept the stipulation which forced the Division to file a formal disciplinary Complaint. The Division further asserts that once the formal Complaint was filed, Respondent failed to respond to any further contact from the Division. Respondent also failed to participate in not just one, but two, telephone conferences with the ALJ.

Moreover, the Division has proven the count alleged. Respondent has admitted to law enforcement and to her former employer that she engaged in the conduct set forth in the Division's Complaint. Furthermore, it would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Therefore, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings.

ORDER

Accordingly, IT IS ORDERED that:

1. Respondent Kay S. White's license to practice as a practical nurse in the State of Wisconsin 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**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Kay S. White.

Dated at Madison, Wisconsin on January 29, 2013.

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