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Before The  
State Of Wisconsin  
BOARD OF NURSING

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In the Matter of the Disciplinary Proceedings  
Against **HOPE M. VAN NYHUIS, R.N.**,  
Respondent

**FINAL DECISION AND ORDER  
WITH VARIANCE**  
ORDER NO. ~~ORDER 0002811~~

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**DHA Case No. SPS-13-0029**  
**Division of Legal Services and Compliance Case No. 13 NUR 151**

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

Hope M. VanNyhuis, R.N.  
905 West 155<sup>th</sup> Street  
Burnsville, MN 55306-5405

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 Sarah Wynn  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P. O. Box 8935  
Madison, WI 53708-8935

**PROCEDURAL HISTORY**

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Hope M. VanNyhuis, R.N., 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). The Division served Respondent on July 10, 2013 by sending a copy of the Notice of Hearing and Complaint to 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 12, 2013.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c), respectively. On August 12, 2013, the administrative law judge (ALJ) issued a Notice of Default against Respondent. Consistent with the Notice of Default issued by the ALJ, the Division filed a recommended proposed decision and order.

On November 13, 2013, the Wisconsin Board of Nursing (Board) reviewed the Proposed Decision and Order of the ALJ. No objections to the proposed decision and order were received from Respondent; objections were filed by the Division. There were no appearances before the Board. Upon considering the ALJ's proposed decision and disciplinary recommendations, and the Division's filed objections, the Board of Nursing adopts the proposed Findings of Fact, Conclusions of Law, and determination of Costs but varies the Order as set forth below.

### **FINDINGS OF FACT**

#### **Facts Related to the Alleged Violation**

Findings of Fact 1-9 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Hope M. VanNyhuis, R.N., DOB June 23, 1976, is licensed in the State of Wisconsin as a professional nurse, having license number 153149-30, first issued on January 3, 2006, and current through February 28, 2014.

2. Respondent's most recent address on file with the Department is 4552 Villa Parkway, Unit D, Eagan, Minnesota 55122.

3. On February 7, 2013, Respondent entered into a Stipulation and Consent Order with the Minnesota Board of Nursing. The Minnesota Stipulation and Consent Order found the following facts:

- a. Between September and October 2011, Respondent had numerous discrepancies in her documentation of medication administration including:
  - i. On ten occasions, Respondent withdrew 1 mg. of hydromorphone and documented administering less than 1 mg. She failed to document waste of the remaining quantity, and did not account for it.
  - ii. On multiple occasions, Respondent failed to document pain assessments for patients to whom she documented administering narcotics.
  - iii. On October 13, 2011, Respondent withdrew 50 mg. of injectable Benadryl at three separate times, and failed to document administering the doses. At least two of those times, Respondent

withdrew the Benadryl under the name of a patient who was not on the unit to which Respondent was assigned.

- b. On October 21, 2011, Respondent self-referred to Minnesota's Health Professionals Services Program (HPSP). On March 27, 2012, Respondent was discharged for non-cooperation because she failed to ensure that HPSP was provided with the results of the chemical dependency and mental health evaluations which HPSP had directed Respondent to obtain.
  - c. On July 17, 2012, Respondent met with a Review Panel due to her discharge from HPSP and the medication discrepancies noted above. Respondent denied diverting the controlled substances. Respondent also denied having any chemical dependency issues, but acknowledged mental health diagnoses.
  - d. In a letter dated August 13, 2012, the Minnesota Board referred Respondent to HPSP for monitoring of her mental health.
  - e. On September 27, 2012, Respondent obtained a chemical dependency evaluation. Respondent acknowledged using non-prescribed Percocet and MS Contin on a regular basis. Respondent was diagnosed with opiate dependence.
  - f. On December 12, 2012, Respondent was discharged from HPSP because she failed to provide HPSP with her signature on the required Participation Agreement.
  - g. During a February 4, 2013, conference, Respondent reported she began abusing Vicodin and Percocet in 2009, refrained from use in 2010, and continued to abuse non-prescribed opiates during 2011 and 2012. Respondent also acknowledged she abused Percocet during the reported period of medication discrepancies in 2011, during both of her enrollments in HPSP, and around the time of her previous meeting with the Review Panel. Respondent admitted that she lied about her chemical use in her 2012 statements to the Review Panel. Respondent denied ever diverting medications from her employer, but admitted stealing controlled substances from family members and friends. Respondent admitted attending chemical dependency treatment in October and November 2012, but stated she relapsed in December 2012. Respondent acknowledged her last use of opiates was only a few days prior to the conference.
4. On February 7, 2013, Respondent entered into a Stipulation and Consent Order with the Minnesota Board of Nursing. The Minnesota Stipulation and Consent Order issued the following discipline:

- a. Respondent's license was suspended and she was unable to practice nursing as defined by Minnesota statutes § 148.171 and was prohibited from implying by words or conduct that she was authorized to practice nursing.
- b. Respondent was to surrender her nursing registration certificate if she was in possession of it and personally deliver or mail the certificate to the Minnesota Board of Nursing within 10 days of the Minnesota Order.
- c. Respondent could petition the Minnesota Board for reinstatement of her license following twelve months from the date of the Minnesota Order. The burden of proof for reinstatement was on Respondent by a preponderance of the evidence that she was capable of practicing professional nursing in a fit and competent manner, was successfully participating in a program of chemical dependency rehabilitation, and had been sober and free from mood-altering chemicals during the twelve months immediately preceding her petition. Respondent was required to include or ensure the following were submitted on her behalf, to be included with her petition for reinstatement in the form specifically outlined in the Minnesota Order:
  - i. A self- report;
  - ii. Reports verifying sobriety from at least two people;
  - iii. Employer report;
  - iv. A report from any mental health professional Respondent consults;
  - v. A report from all of Respondent's health care professionals;
  - vi. A report of any prescribed mood-altering chemicals that have been prescribed;
  - vii. A chemical dependency evaluation and compliance with the evaluator's recommendations;
  - viii. A mental health evaluation and compliance with the evaluator's recommendations;
  - ix. Random alcohol and drug screens; and
  - x. Waivers.

5. Through the Stipulation and Consent Order, Respondent agreed to the above statements of fact.

6. Percocet contains oxycodone. Pursuant to Wis. Stat. § 961.16(2)(a)11., oxycodone is a Schedule II controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(2). Furthermore, oxycodone is a Schedule II controlled substance under 21 CFR § 1308.12.

7. Vicodin contains less than 15 milligrams of hydrocodone, and is a Schedule III controlled substance pursuant to Wis. Stat. § 961.18(c), for which a prescription is required pursuant to Wis. Stat. § 961.38(3). Furthermore, hydrocodone combination products less than 15 mg/du is a Schedule III controlled substance under 21 CFR § 1308.13.

8. MS Contin contains morphine. Pursuant to Wis. Stat. § 961.16(2)(a)10., morphine is a Schedule II controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(2). Furthermore, morphine is a Schedule II controlled substance under 21 CFR § 1308.12.

9. Pursuant to Wis. Stat. § 961.16(2)(a)8., hydromorphone is a Schedule II controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(2). Furthermore, hydromorphone is a Schedule II controlled substance under 21 CFR § 1308.12.

#### **Facts Related to Default**

10. The Complaint and Notice of Hearing in this matter was served on Respondent on July 10, 2013, 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. The Notice of Hearing further advised 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. In addition, the Board 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.”

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

12. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for August 12, 2013. 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 7, 2013.

13. On July 31, 2013, DHA received notification from Department of Administration Mail Services that Respondent had moved as well as notification of Respondent’s change of address. The Notice of the prehearing conference was re-sent to Respondent at the address provided, 905 West 155<sup>th</sup> Street, Burnsville, MN 55306-5405.

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

15. During the August 12, 2013 conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

16. On August 12, 2013, the ALJ issued a Notice of Default and ordered the Division to file and serve a recommended proposed decision no later than August 16, 2013, which date was subsequently extended to August 28, 2013.

17. The Division filed and served its recommended proposed decision and order. Respondent did not file a response to either the Notice of Default or 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.

Pursuant to Wis. Admin. Code § HA 1.07(3)(c), Respondent is in default for failing to provide a telephone number as requested, failing to answer the telephone and failing to 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 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, the disciplining authority may "make findings and enter an order on the basis of the complaint." Findings of Fact 1-9, above, are taken from the Division's Complaint and are undisputed. As shown below, these facts establish violations of Wis. Stat. § 441.07(1)(b),(c) and (d), and Wis. Admin. Code §§ N 7.03(2), N 7.04(2) and 7.04(7).

Wisconsin Stat. § 441.07(1) provides:

(1) The board may . . . revoke, limit, suspend or deny renewal of a license of a registered nurse, . . . or may reprimand a registered nurse . . . if the board finds that the person committed any of the following:

(b) One or more violations of this subchapter or any rule adopted by the board under the authority of this subchapter.

(c) Acts which show the registered nurse . . . to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.

(d) Misconduct or unprofessional conduct.

Wisconsin Admin. Code § N 7.04(2) and (7) define “misconduct or unprofessional conduct” as used in Wis. Stat. § 441.07(1) 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,” and includes “administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law” and “having disciplinary action through final board adjudication taken against one’s license in another jurisdiction.” Respondent engaged in unprofessional conduct pursuant to Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(2) by obtaining controlled substances without a valid prescription other than in the course of legitimate practice or as otherwise prohibited by law. Respondent also engaged in unprofessional conduct as defined in Wis. Admin. Code § N 7.04(7) by having her Minnesota license suspended. As a result of these violations, she also violated Wis. Stat. § 441.07(1)(b), which defines misconduct or unprofessional conduct to include committing violations of Subchapter I of Chapter 441 of the Wisconsin Statutes and violations of Board rules.

The Division also asserts that Respondent violated Wis. Stat. § 441.07(c) by committing “[a]cts which show the registered nurse . . . to be unfit or incompetent by reason of . . . abuse of alcohol or other drugs . . .” Wisconsin Admin. Code § N 7.03(2) defines “abuse of alcohol or other drugs” 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.”

The facts establish that Respondent was diagnosed with opiate dependency, she admitted abusing opiates in 2011-2013, admitted using non-prescribed Percocet and MS Contin on a regular basis, admitted lying to the Review Panel in 2012 about her chemical use, and admitted stealing controlled substances from family members and friends. Although Respondent denied ever diverting medications from her employer, there were reported medication discrepancies during her employment in 2011, a time period in which, by her own admission, she was abusing controlled substances. While the facts do not necessarily establish that Respondent’s ability to “safely” practice nursing was impaired as there is no indication in the record that she was ever under the influence of while on the job or that she jeopardized patients’ health by taking their medications, the facts set forth above are sufficient to conclude that her ability to “reliably” practice nursing was impaired, particularly given her access to controlled substances as a nurse. Therefore, Respondent has also violated Wis. Stat. § 441.07(c).



Based on the foregoing, Respondent has violated Wis. Stat. § 441.07(1)(b), (c) and (d) and Wis. Admin. Code § N 7.03(2) and 7.04(2) and (7). 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. *See State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976).

The Division recommends revoking Respondent's license to practice nursing in the State of Wisconsin and her privilege to practice in the State of Wisconsin pursuant to the Nurse Licensure Compact. Under the circumstances of this case and the criteria set forth in *Aldrich*, the Division's recommendation is appropriate.

Respondent admitted to abusing opiates and was diagnosed with opiate dependency. Respondent failed to provide a valid prescription for any opiates. Respondent admitted to obtaining controlled substances outside the course of legitimate nursing practice, from friends and family. Respondent was discharged from HPSP twice. Respondent is dealing with a substance abuse disorder and is illegally obtaining medications for personal use. Respondent's actions violate the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public.

Respondent should not be in a position with narcotic access and should not be practicing without further drug testing or treatment. Respondent's two discharges from HPSP demonstrate that she has not been rehabilitated as she has not yet successfully treated her dependency. Revocation of Respondent's license to practice nursing in the state of Wisconsin protects the public and deters other license holders from engaging in similar conduct.

### **Costs**

The Board 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. Imposition of full costs is warranted in this case. The factual allegations are undisputed, the Division has proven the majority of charged allegations. The Division represents that it offered Respondent a stipulated settlement, but Respondent failed to

respond to the Division's offer. In fact, Respondent failed to participate in this disciplinary proceeding in any way. Respondent's violations are serious and the Division is seeking the most serious discipline, revocation of Respondent's license to practice in Wisconsin. Finally, the Department is a program revenue agency and it would be unfair to impose the cost of disciplining Respondent on other licensees who have not engaged in such misconduct.

### **EXPLANATION OF VARIANCE**

As the regulatory authority and final decision-maker in this Class 2 proceeding, the Board of Nursing may modify the ALJ's proposed decision. *See* Wis. Stat. § 227.46(2). The Section must provide reasons for any such modifications. *Id.* Here, the Board adopts as its own the findings of fact and conclusions of law set forth in the proposed decision, and maintains the order for payment of all recoverable costs. However, the Board modifies the proposed order with respect to the discipline to be imposed. The Division had requested that both the Respondent's license to practice nursing in the State of Wisconsin and her privilege to practice in the State of Wisconsin pursuant to the Nurse Licensure Compact be revoked. The ALJ's discussion in the Order notes only the request to have the privilege to practice in the state pursuant to the Nurse Licensure Compact. The Board varies the Order to reflect the actual request of the Division.

The ALJ also recommends revocation only of Respondent's privilege to practice nursing in the State of Wisconsin pursuant to the Nursing Licensure Compact and does not address the Respondent's primary licensure; her nursing license issued by the State of Wisconsin. The Board hereby varies the Order to also revoke Respondent's Wisconsin license to practice nursing in addition to her right to practice under the Nurse Licensure Compact.

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). Revocation of Respondent's ability to practice nursing in the state of Wisconsin protects the public and deters other license holders from engaging in similar conduct for the reasons set forth in the discussion of the appropriate discipline above. It is therefore necessary to revoke both the license issued by the State of Wisconsin and the privilege to practice in Wisconsin under the Nurse Licensure Compact to meet this objective.

### **ORDER**

Accordingly, IT IS ORDERED that:

1. The license of Respondent, Hope M. VanNyhuis, R.N., to practice nursing in the State of Wisconsin and her privilege to practice in Wisconsin under another state license pursuant to the Nurse Licensure Compact, are 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

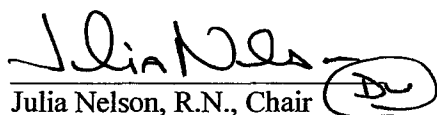
made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

**Department Monitor  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 8935  
Madison, WI 53708-8935**

3. The terms of this Order are effective the date the Final Decision and Order is signed by the Board.

IT IS FURTHER ORDERED that the above-captioned matter is closed as to Respondent Hope M. VanNyhuis, R.N.

Dated at Madison, Wisconsin on this 2<sup>nd</sup> day of December 2013.

  
Julia Nelson, R.N., Chair

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