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Before The
State Of Wisconsin
BOARD OF NURSING

In the Matter of the Disciplinary Proceedings
Against **STACY L. WOODS, R.N.**, Respondent

FINAL DECISION AND ORDER
Order No. _____

0002955

Division of Legal Services and Compliance Case No. 13 NUR 150

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 21st day of January, 20 14.



Member
Board of Nursing



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

In the Matter of the Disciplinary Proceedings
Against **STACY L. WOODS, R.N.**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-13-0048

Division of Legal Services and Compliance Case No. 13 NUR 150

0002955

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

Stacy L. Woods, R.N.
201 Oak Street, Box 391
Mabel, MN 55954

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 Kim M. Kluck
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, Division of Legal Services and Compliance (Division), filed a formal Complaint against Respondent Stacy L. Woods, R.N. The Complaint alleged that Respondent was subject to discipline pursuant to Wis. Stat. 441.07(1) for being unfit or incompetent by abuse of alcohol or other drugs, in violation of Wis. Admin. Code § N 7.03(2), and for committing misconduct or unprofessional conduct by having disciplinary action taken against her license in another jurisdiction, in violation of Wis. Admin. Code § N 7.04(7). The Division served Respondent on September 30, 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 November 19, 2013 (re-scheduled from November 4, 2013).

At the prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c), respectively. In light of Respondent's failure to file an Answer to the Complaint and failure to appear for the conference, the undersigned administrative law judge (ALJ) found Respondent to be in default. On November 19, 2013, the ALJ issued a Notice of Default against the Respondent and ordered that the Division file a recommended proposed decision by December 9, 2013. The Division timely filed its recommended proposed decision. Respondent did not file a response to either the Notice of Default or to the Division's subsequent submission.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of Fact 1-4 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Stacy L. Woods, R.N., (DOB June 18, 1973) is licensed in the State of Wisconsin as a professional nurse, having license number 160371-30, first issued on January 2, 2008. This license expired on February 28, 2010, and has not been renewed. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew upon payment of a fee until February 27, 2015.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 201 South Oak Street, Box 391, Mabel, Minnesota 55954.

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

- a. In December 1998 and October 2009, Respondent was convicted of driving under the influence.
- b. In January 2009, Respondent pled guilty to driving with an open bottle in her vehicle and was issued a stay of adjudication.
- c. In June 2009, Respondent was terminated from employment as a nurse in Wisconsin due to violations of her performance improvement plan. The performance plan was based on Respondent's attendance issues, completing personal tasks while at work, transcription errors, medication administration errors and documentation omissions.
- d. In February 2001, Respondent was prescribed benzodiazepines and sleep medication to manage her panic attacks and anxiety symptoms. Respondent began abusing the benzodiazepines and her use of alcohol escalated.

- e. On June 5, 2011, the Minnesota Board of Nursing (Minnesota Board) received Respondent's application of license renewal but failed to disclose her previous convictions, chemical abuse and termination from nursing employment.
- f. In late June 2011, Respondent was terminated from nursing employment at a long term care facility because Respondent appeared impaired while on duty and left medications unattended.
- g. In July and August 2011, Respondent was hospitalized for psychiatric care. Recommendations included participating in outpatient therapy and evaluation and treatment for substance abuse. During Respondent's subsequent chemical use assessment, Respondent denied abusing substances and no treatment was recommended.
- h. At Respondent's conference with the Minnesota Review Panel and in her written response to the Minnesota Board, Respondent acknowledged abusing benzodiazepines and alcohol. Respondent also admitted to being impaired by use of her prescription medication while on duty as a nurse in June 2011.
- i. Respondent has not participated in the recommended trauma counseling or a structured chemical dependency treatment program.
- j. Respondent reported to the Minnesota Board that she entered a psychiatric treatment program in 2011 but did not complete the program.

4. The Minnesota Board concluded that, by the above conduct, Respondent had violated Minnesota Statutes section 146.81, subdivisions 1(6)¹, (9)², (16)³ and (23)⁴. The Minnesota Board imposed the following discipline: a stayed suspension of Respondent's license as long as she complied with conditions which required her to participate in the Health Professionals

¹ Minnesota Statutes section 148.261, subdivision 1(6), proscribes "[e]ngaging in unprofessional conduct, including, but not limited to, a departure from or failure to conform to board rules of professional or practical nursing practice that interpret the statutory definition of professional or practical nursing as well as provide criteria for violations of the statutes, or, if no rule exists, to the minimal standards of acceptable and prevailing professional or practical nursing practice, or any nursing practice that may create unnecessary danger to a patient's life, health, or safety. Actual injury to a patient need not be established under this clause."

² Minnesota Statutes section 148.261, subdivision 1(9), proscribes "[a]ctual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as a result of any mental or physical condition."

³ Minnesota Statutes section 148.261, subdivision 1(16), proscribes "[i]mproper management of patient records, including failure to maintain adequate patient records, to comply with a patient's request made pursuant to sections 144.291 to 144.298, or to furnish a patient record or report required by law."

⁴ Minnesota Statutes section 148.261, subdivision 1 (23), proscribes "[m]aking a false statement or knowingly providing false information to the board, failing to make reports as required by section 148.263, or failing to cooperate with an investigation of the board as required by section 148.265."

Services Program (HPSP), enter into an agreement with the HPSP for monitoring of her substances use disorder and psychiatric disorder for three years, and abstain from mood-altering chemicals.

Facts Related to Default

5. The Complaint and Notice of Hearing in this matter was served on Respondent on September 30, 2013 by both certified and regular mail consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing 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.”

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

7. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for November 4, 2013, which was subsequently rescheduled to November 19, 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 October 30, 2013, which was subsequently extended to November 14, 2013. The Notice instructed Respondent: “A respondent’s failure to appear at a scheduled conference or hearing may result in default judgment being ordered against the respondent.”

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

9. At the prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

10. On November 19, 2013, the ALJ issued a Notice of Default and Order, requiring the Division to serve no later than December 9, 2013 a recommended proposed decision.

11. The Division timely filed its recommended proposed decision.

DISCUSSION AND CONCLUSIONS OF LAW

As stated in the November 19, 2013 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the prehearing conference held on November 19, 2013. Wisconsin Admin. Code § SPS 2.14 provides: “If the respondent fails to answer as required by s. SPS 2.09 or fails to appear at the hearing at the time fixed therefor, 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.” Wisconsin Admin. Code § HA 1.07(3) states, 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 video conference line . . . (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

An Answer to a Complaint must be filed within 20 days of service of the Complaint. *See* Wis. Admin. Code § SPS 2.09(4). Service of the Complaint may be made by mailing a copy of the Complaint to the respondent at the respondent's last known address. *See* Wis. Stat. § 440.11(2); Wis. Admin. Code § SPS 2.08(1). "Service by mail is complete upon mailing." Wis. Admin. Code § SPS 2.08(1). On September 30, 2013, the Division served Respondent with the Complaint by mailing a copy of the Notice of Hearing and Complaint by both regular and certified mail to her most recent address on file with the Department. Pursuant to Wis. Admin. Code §§ SPS 2.08(1) and 2.09(4), Respondent was required to file an Answer within 20 days but failed to do so.

Because Respondent is in default for her failure to file an Answer and to appear at the prehearing conference, an order may be entered against her on the basis of the Complaint and other evidence. Wis. Admin. Code § 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violation of Wis. Stat. § 441.07(1)(b) and (c) and (d) and Wis. Admin. Code § N 7.03(2) and 7.04(7)

Wisconsin Stat. § 441.07(1) provides:

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.

The phrase "[a]buse of alcohol or other drugs" as used in Wis. Stat. § 441.07(1)(c) is "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).

The undisputed facts establish that in late June of 2011, Respondent was terminated from nursing employment at a long term care facility because she appeared impaired while on duty and left medications unattended. In addition, at Respondent's conference with the Minnesota Review Panel and in her written response to the Minnesota Board, Respondent acknowledged abusing benzodiazepines and alcohol and also admitted to being impaired by use of her prescription medication while on duty as a nurse in June 2011. Further, the Minnesota Board found a violation of Minnesota Statutes section 146.81, subdivision 1(9), which prohibits "Actual or potential inability to practice nursing with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, chemicals, or any other material, or as a result of any mental or physical condition."

Based on the foregoing, Respondent violated Wis. Stat. § 441.07(1)(c) and Wis. Admin. Code § N 7.03(2) by using alcohol or a drug to an extent that such use impaired her ability to safely or reliably practice.⁵

Respondent also committed misconduct or unprofessional conduct in violation of Wis. Stat. § 441.07(1)(d). The phrase "misconduct or unprofessional conduct" is defined as "[a]ny 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 "[h]aving disciplinary action through final board adjudication taken against one's license in another jurisdiction." Wis. Admin. Code § N 7.04(7).

The facts establish that on February 7, 2013, Respondent entered into a Stipulation and Consent Order with the Minnesota Board of Nursing. The Minnesota Board concluded that Respondent violated the Minnesota provisions outlined above and imposed discipline against her. By having disciplinary action taken against her license in another jurisdiction by the Minnesota Board of Nursing, Respondent engaged in misconduct or unprofessional conduct pursuant to 441.07(1)(d) and Wis. Admin. Code § N 7.04(7).

Finally, by violating Wis. Stat. § 441.07(1)(c) and (d), and Wis. Admin. Code § N 7.03(2) and 7.04(7), Respondent is also in violation of Wis. Stat. § 441.07(1)(b) which allows the Board to discipline upon a finding that a nurse committed "[o]ne or more violations of this subchapter or any rule adopted by the board under the authority of this subchapter."

As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(b) and (c) and (d).

⁵ The Division asserts that Respondent committed negligence, stating: "The phrase 'negligence' as used in Wis. Stat. § 441.07(1)(c) includes, but is not limited to '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)." (Division's recommended proposed decision, p. 6) This assertion is incorrect. The definition quoted by the Division and contained in subsection (2) of § N 7.03 is not a definition for negligence. Rather, the definition contained in subsection (2) is for "abuse of alcohol or other drugs." The term "negligence" is defined in a different subsection, subsection (1), of Wis. Admin. Code § N 7.03. The Complaint did not allege negligence; therefore, this decision does not address it.

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 nurse in Wisconsin be suspended for an indefinite period and that her privilege to practice as a nurse in the State of Wisconsin under the authority of another state's license pursuant to the Nurse Licensure Compact also be suspended for an indefinite period.

This recommendation is appropriate and is adopted in this case. Respondent's conduct was serious and included being impaired while on duty as a nurse and having disciplinary action taken against her license in Minnesota. Respondent has a significant problem with alcohol and other drugs and is in need of rehabilitation. This is evidenced not only by her impairment while on duty, but also by her two convictions for driving under the influence and her conviction for an open container in her vehicle. In addition, Respondent was terminated from employment as a nurse in Wisconsin in 2009 due to violations of her performance improvement plan, which included attendance issues, completing personal tasks while at work, transcription errors, medication administration errors and documentation omissions.

Until Respondent successfully addresses her chemical dependency and is able to satisfactorily perform her nursing duties, patients need to be protected from her conduct. This discipline will also deter others in Respondent's profession from engaging in such conduct.

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).

Based on the factors delineated in the *Buenzli-Fritz* decision and the facts of this case, Respondent should be assessed the full amount of recoverable costs in this case.

ORDER

Accordingly, IT IS ORDERED that the license of Respondent Stacy L. Woods to practice as a nurse in the State of Wisconsin is SUSPENDED for an indefinite period from the date the Final Decision and Order is signed by the Board. The privilege of Respondent to practice as a nurse in the State of Wisconsin under the authority of another state's license pursuant to the Nurse Licensure Compact is also SUSPENDED for an indefinite period.

Respondent may petition the Board for a modification of this Order. However, it shall be in the sole discretion of the Board whether to modify this Order or to impose any additional limitations if this Order is modified.

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:

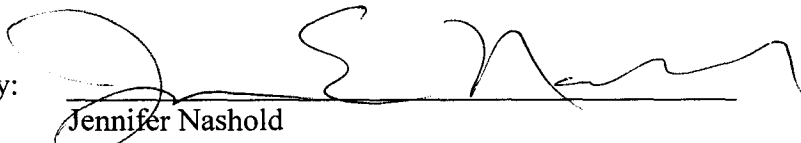
**Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708-8935**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Stacy L. Woods.

Dated at Madison, Wisconsin on this 29th day of November, 2013.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By:


Jennifer Nashold
Administrative Law Judge