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Before The
State Of Wisconsin
BOARD OF NURSING

In the Matter of the Disciplinary Proceedings
Against **RACHEL J. GLISZINSKI, L.P.N.**,
Respondent

FINAL DECISION AND ORDER
Order No. 0003138

Division of Legal Services and Compliance Case No. 12 NUR 509

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 10th day of April, 2014.

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 **RACHEL J. GLISZINSKI, L.P.N.**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-13-0012

ORDER 0003138

Division of Legal Services and Compliance Case No. 12 NUR 509

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

Rachel J. Gliszinski
700 West Meadows Lane, Apt. 27
Burlington, WI 53105

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

Attorney Sandra L. Nowack
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

This case is currently before the undersigned administrative law judge (ALJ) following the ALJ's October 18, 2013 order granting partial summary judgment in favor of the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division). That order is attached to this decision and incorporated by reference herein.

The Summary Judgment Order granted summary judgment to the Division on the issue of whether violations occurred, concluding that Respondent Rachel Gliszinski was unfit or incompetent by reason of abuse of drugs and that she committed misconduct or unprofessional conduct, in violation of Wis. Stat. § 441.07(1)(c) and (d), Wis. Admin. Code § N 7.03(2) and 7.04(1) and (2). However, the order denied summary judgment on the issues of discipline and costs and set a status conference for October 30, 2013, at which time the parties were to inform the ALJ whether the issues of discipline and costs should be determined on the basis of the

parties' written submissions, or whether a hearing on those issues was required and, if so, to establish a date for such hearing.

At the October 30, 2011 telephone conference, the Division stated that it would rely on its previous submissions with respect to the issues of discipline and costs. Ms. Gliszinski indicated that in addition to her previous submissions, she would provide a final document setting forth her position. That document was filed on November 10, 2013.

Additional procedural history in this matter is contained in the attached Summary Judgment Order.

FINDINGS OF FACT

Facts Related to the Violation

The undisputed material facts related to the violations in this matter are contained in the attached October 18, 2013 Summary Judgment Order.

Facts Related to Discipline and Costs

1. As set forth in the Summary Judgment Order, on January 26, 2011, Ms. Gliszinski called in a prescription order under a false name in an attempt to obtain Xanax, a Schedule IV controlled substance, but was arrested when she attempted to pick up that prescription at the pharmacy. She subsequently entered a guilty plea to the charge of Attempted Obtaining a Controlled Substance by Misrepresentation and entered into a Deferred Prosecution Agreement. On September 27, 2011, the Milwaukee County Circuit Court found that she had complied with the Deferred Prosecution Agreement and dismissed the criminal case against her. (Attached Summary Judgment Order, pp. 5-6)

2. Ms. Gliszinski admitted in a May 5, 2011 letter attached to her April 22, 2013 Answer to the Complaint: "I started to self medicate to heal my pain. I was so out of control that I attempted to break the law. After the doctor refused to refill my prescription, I began abusing my nursing privileges." (Attachment to Respondent's Answer, p. 16)

3. On July 12, 2011, Ms. Gliszinski was admitted to the Department's Professional Assistance Procedure (PAP) program but was dismissed from the program on October 18, 2012 for noncompliance. (Attached Summary Judgment Order, pp. 5-6)

4. The Deferred Prosecution Agreement, which Ms. Gliszinski successfully completed, required her to participate in an AODA/mental health assessment through Rogers Memorial Hospital, participate in required abuse and/or mental health treatment, and undergo random screens for drugs and alcohol to ensure absolute sobriety. (Attachment to Respondent's Answer, pp. 3-4)

5. A March 9, 2011 letter from a substance abuse counselor at Rogers Memorial Hospital indicates that Ms. Gliszinski was admitted as an inpatient at Rogers from February 1-5,

2011 and that it was recommended that she step down to the dual diagnosis partial program at Rogers for 6 hours per day, Monday through Friday, for three weeks. The letter states that Ms. Gliszinski was admitted into the program on February 22, 2011 and was still enrolled at the time of the March 9, 2011 letter. The letter indicates that she had been randomly drug tested and appeared to remain sober and motivated for continued treatment. (*Id.*, p. 20)

6. A May 27, 2011 letter from another counselor at Rogers indicates that Ms. Gliszinski successfully completed the AODA day treatment program, for which she was admitted on April 4, 2011 and discharged May 27, 2011. The letter states that during Ms. Gliszinski's stay with Rogers, her attendance was perfect, she remained drug and alcohol free, was "an internally motivated participant in therapy and active in the process with peers" and exhibited appropriate coping skills in difficult circumstances. (*Id.*, p. 21)

7. A therapist from Acacia Wellness Center indicates in a March 13, 2013 letter that she had been seeing Ms. Gliszinski for individual therapy since May 12, 2011 and that Ms. Gliszinski remained opiate free during her time as evidenced by her urine drug screens administered at Acacia. The therapist also indicates that during the period of July 2011 through October 2012, Ms. Gliszinski was enrolled in the PAP program, that the therapist completed monthly progress reports on Ms. Gliszinski's behalf and that during that time period, the therapist confirmed that Ms. Gliszinski was substance free. The letter further indicates that Ms. Gliszinski has been active in recovery as evidenced by her attending meetings at Acacia as well as attending regular Narcotics Anonymous meetings. (*Id.*, p. 1)

8. An August 6, 2012 letter from Ashley Horton, the Department Monitor and PAP Coordinator, indicates that Ms. Gliszinski had been enrolled in the PAP program since June 13, 2011 and that as part of the PAP program was required to submit to random drug screens and attend 12-step and therapy sessions. The letter indicates that all of Ms. Gliszinski's drug screens were negative for alcohol and non-prescribed controlled substances. (*Id.*, p. 2)

9. An October 23, 2012 letter from an attendee of Narcotics Anonymous indicates that the attendee had observed Ms. Gliszinski in attendance at the meetings since April of 2011, that the meetings occurred twice per week and that Ms. Gliszinski was a "regular, participating, contributing member" during that eighteen-month time period. (*Id.*, p. 9)

10. An undated letter from an individual who at the time of the letter had been running Narcotics Anonymous meetings for approximately one year indicates that Ms. Gliszinski attended meetings regularly, that she observed "tremendous improvement" in Ms. Gliszinski's "understanding and knowledge of addiction" and that Ms. Gliszinski is "working hard" in the program. (*Id.*, p. 10)

DISCUSSION AND CONCLUSIONS OF LAW

Violations

As established in the attached Summary Judgment Order, Ms. Gliszinski violated Wis. Stat. § 441.07 (1) (c) and (d) because she is unfit or incompetent by reason of abuse of drugs, as

defined by § N 7.03(2) and because she engaged in misconduct or unprofessional conduct as defined by Wis. Admin. Code § N 7.04(1) and (2).

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 an indefinite suspension of Ms. Gliszinski's license to practice nursing in accordance with the Wisconsin Board of Nursing's (Board) standard practice impairment order, with its requirements for treatment, practice limitations, random drug screens, work reports and group support meetings. The Division requests that the indefinite suspension should be stayed upon Ms. Gliszinski having proven to the Board's satisfaction that she has been in compliance with the terms of the impairment order for at least three months. The Division states that the recommended discipline is consistent with two prior Board decisions involving similar facts, *In the Matter of Disciplinary Proceedings Against Elizabeth S. Weindorfer, R.N., A.P.N.P.*, Order No. 0001939 (July 19, 2013) and *In the Matter of Disciplinary Proceedings Against Amy L. Wojtusik, R.N.*, Order No. 0002430 (May 9, 2013).

Ms. Gliszinski requests that her license be kept in good standing and that she pay half the costs of these proceedings. She states that the events occurred during a very stressful time in her life, that she has learned her lesson, especially as a result of the criminal charges and prosecution which appears on the Wisconsin Circuit Court Access website, and that she has been drug-free for three years. She further states that her noncompliance with the PAP program was due to her inability to afford the required tests as a result of her unemployment, and also due to a personality conflict with Patara Horn, the PAP Coordinator. She has provided proof as outlined in the Findings of Fact above that during all or part of the time period between the January 26, 2011 incident and March 13, 2013, she has seen a therapist, been active in Narcotics Anonymous and successfully passed drug tests.

While Ms. Gliszinski's efforts are commendable, the fact remains that the allegations here were serious. Ms. Gliszinski called in a prescription order under a false name in an attempt to obtain Xanax, a Schedule IV controlled substance. She was arrested when she attempted to pick up that prescription at the pharmacy. Shortly thereafter, she was admitted to the hospital for a 5-day in-patient treatment for opioid dependency and then entered an outpatient treatment program at Rogers Memorial Hospital and was diagnosed with opioid dependency. She subsequently entered a guilty plea to the charge of Attempted Obtaining a Controlled Substance by Misrepresentation and entered into a Deferred Prosecution Agreement. On September 27, 2011, the Milwaukee County Circuit Court found that she had complied with the Deferred Prosecution Agreement and dismissed the criminal case against her.

Moreover, there is no proof that Ms. Gliszinski has remained in treatment or drug free after March 13, 2013, the date of the letter from the Acacia therapist, and that Ms. Gliszinski failed to comply with the PAP program in 2012. There is insufficient evidence in the record

showing that Ms. Gliszinski has been fully rehabilitated and that she may safely and reliably practice nursing.

I conclude based on the facts of this case that the three purposes of discipline are best served by the discipline recommended by the Division outlined in the Order section below. I further conclude that this discipline is consistent with the prior Board cases cited above. Like this case, both of the prior cases involved obtaining controlled substances for unauthorized personal use by writing illegal prescriptions. Also, as here, the nurses were criminally charged. Although the prior cases were more egregious in that the misconduct took place over a longer time period of time, and in *Weindorfer*, also involved writing illegal prescriptions for several other individuals, the cases are sufficiently similar to justify the same discipline. The nurses in those cases, like Ms. Gliszinski, had serious drug problems which required that they not practice until the Board could be assured that the nurses received the treatment they needed for full rehabilitation and to keep future patients out of harm's way.

Costs

The Board has the authority to assess costs pursuant to Wis. Stat. § 440.22. The Division requests that Ms. Gliszinski 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).

The factors in favor of imposing costs on Ms. Gliszinski in the instant matter are that the one count alleged was proven, the misconduct was serious, the discipline sought is relatively severe, Ms. Gliszinski's cooperation in these proceedings has been intermittent at best, and whatever costs she does not pay will have to be borne by other licensees in her profession. Factors in favor of not imposing costs include that the incident involved only one count, Ms. Gliszinski does not have any prior discipline, and she has provided proof of genuine efforts to take responsibility for her actions and remain drug-free. I also note that one of the main concerns and barriers to positively moving forward expressed by Ms. Gliszinski has been her lack of finances. In view of the foregoing, I conclude that imposition of 80% of the costs of these proceedings be imposed on Ms. Gliszinski.

ORDER

For the reasons set forth above, IT IS HEREBY ORDERED that the professional nursing license issued to Respondent Rachel Gliszinski, L.P.N. is SUSPENDED as follows:

SUSPENSION

A.1. Ms. Gliszinski's license to practice as a nurse in the State of Wisconsin is **SUSPENDED** for an indefinite period.

A.2. Ms. Gliszinski's 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 is also **SUSPENDED** for an indefinite period.

A.3. During the pendency of this Order and any subsequent related orders, Ms. Gliszinski may not practice in another state pursuant to the Nurse Licensure Compact under the authority of a Wisconsin license unless she receives prior written authorization to do so from both the Wisconsin Board of Nursing and the regulatory board in the other state.

A.4 Ms. Gliszinski shall mail or physically deliver all indicia of Wisconsin nursing licensure to the Department Monitor within 14 days of the effective date of this order. Limited credentials can be printed from the Department of Safety and Professional Services website at <http://dsps.wi.gov/Home>.

A.5. Upon a showing by Ms. Gliszinski of continuous, successful compliance for a period of at least 5 years with the terms of this Order, including at least 600 hours of active nursing for every year the suspension is stayed, the Board may grant a petition by Ms. Gliszinski under paragraph D.6. for return of full Wisconsin licensure. The Board may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time.

STAY OF SUSPENSION

B.1. The suspension shall not be stayed for the first 3 months, but any time after three months the suspension may be stayed upon Ms. Gliszinski providing proof, which is determined by the Board or its designee to be sufficient, that she has been in compliance with the provisions of Sections C and D of this Order for the most recent 3 consecutive months.

B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Ms. Gliszinski is in substantial or repeated violation of any provision of Sections C or D of this Order. A substantial violation includes, but is not limited to, a positive drug or alcohol screen. A repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Board may, in conjunction with any removal of any stay, prohibit Ms. Gliszinski for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.

B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Ms. Gliszinski either by:

- (a) Mailing to Ms. Gliszinski's last-known address provided to the Department of Safety and Professional Services pursuant to Wis. Stat. § 440.11; or
- (b) Actual notice to Ms. Gliszinski or her attorney.

B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Ms. Gliszinski is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.

B.5. If Ms. Gliszinski requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Ms. Gliszinski's request, unless waived by Ms. Gliszinski. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

C.1. Ms. Gliszinski shall enter into, and shall continue, drug and alcohol treatment with a treater acceptable to the Board or its designee (Treater). Ms. Gliszinski shall participate in, cooperate with, and follow all treatment recommended by Treater.

C.2. Ms. Gliszinski shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.

C.3. Treater shall be responsible for coordinating Ms. Gliszinski's rehabilitation and treatment as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as required by this Order, Ms. Gliszinski shall immediately seek approval of a successor Treater by the Board or its designee.

C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee after receiving a petition for modification as required by D.5., below.

C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Ms. Gliszinski's progress in drug and alcohol treatment. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

C.6. Ms. Gliszinski shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collection sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Safety and Professional Services, Division of Legal Services and Compliance to: (a) obtain all specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Ms. Gliszinski's treatment and rehabilitation with Treater and treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

Alcoholics Anonymous/Narcotics Anonymous Meetings

C.7. Ms. Gliszinski shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Ms. Gliszinski at such meetings shall be verified and reported quarterly to Treater and the Department Monitor.

Sobriety

C.8. Ms. Gliszinski shall abstain from all personal use of alcohol.

C.9. Ms. Gliszinski shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Ms. Gliszinski shall disclose her drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Ms. Gliszinski shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Ms. Gliszinski's treatment with, and provide copies of treatment records to, Treater and the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.

C.10. Ms. Gliszinski shall abstain from all use of over-the-counter medications or other substances (including but not limited to natural substances such as poppy seeds) which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Ms. Gliszinski's treatment and rehabilitation. It is Ms. Gliszinski's responsibility to educate herself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.

C.11. Ms. Gliszinski shall report to Treater and the Department Monitor all prescription medications and drugs taken by her. Reports must be received within 24 hours of ingestion or administration of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Each time the prescription is filled or refilled, Ms. Gliszinski shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.

C.12. Ms. Gliszinski shall provide the Department Monitor with a list of over-the-counter medications and drugs that she may take from time to time. Over-the-counter medications and drugs that mask the consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Ms. Gliszinski's treatment and rehabilitation, shall not be taken unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.11.

Drug and Alcohol Screens

C.13. Ms. Gliszinski shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department (Approved Program).

C.14. At the time Ms. Gliszinski enrolls in the Approved Program, Ms. Gliszinski shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:

(a) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.

(b) Production of a urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.

C.15. The Approved Program shall require the testing of specimens at a frequency of not less than 49 times per year, for the first year of this Order. After the first year, Ms. Gliszinski may petition the Board on an annual basis for a modification of the frequency of tests. The Board may adjust the frequency of testing on its own initiative at any time.

C.16. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Ms. Gliszinski shall promptly submit to additional tests or examinations as the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.

C.17. In addition to any requirement of the Approved Program, the Board or its designee may require Ms. Gliszinski to do any or all of the following: (a) submit additional specimens; (b) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.

C.18. All confirmed positive test results shall be presumed to be valid. Ms. Gliszinski must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.

C.19. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

C.20. Ms. Gliszinski shall not work as a nurse or other health care provider in a setting in which Ms. Gliszinski has access to controlled substances.

C.21. Ms. Gliszinski shall practice only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee.

C.22. Ms. Gliszinski shall practice only in a work setting pre-approved by the Board or its designee.

C.23. Ms. Gliszinski may not work in a home health care, assisted living, hospice, pool nursing, or agency setting.

C.24. Ms. Gliszinski shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Ms. Gliszinski works as a nurse or caregiver or provides health care, currently or in the future.

C.25. It is Ms. Gliszinski's responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Ms. Gliszinski's work performance, and shall include the number of hours of active nursing practice worked during that quarter. If a report indicates poor performance, the Board may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion.

C.26. Ms. Gliszinski shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

MISCELLANEOUS

Department Monitor

D.1. Proof of successful course completion, quarterly reports, petitions and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent to the Department Monitor at the address below:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Required Reporting by Ms. Gliszinski

D.2. Ms. Gliszinski is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Ms. Gliszinski shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Ms. Gliszinski shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Ms. Gliszinski.

D.3. Every three (3) months Ms. Gliszinski shall notify the Department Monitor of her compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by Board

D.4. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Ms. Gliszinski continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

D.5. Ms. Gliszinski may petition the Board on an annual basis for modification of the terms of this Order; however, no such petition for modification shall occur earlier than one year from the date of the initial stay of the suspension. Any petition for modification shall be accompanied by a written recommendation from Ms. Gliszinski's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Ms. Gliszinski shall not have a right to any further hearings or proceedings on the denial.

D.6. Ms. Gliszinski may petition the Board for termination of this Order any time after five years from the date of the initial stay of the suspension. However, no petition for termination shall be considered without a showing of continuous, successful compliance with the terms of the Order, for at least five years.

Costs of Compliance

D.7. Ms. Gliszinski shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Additional Discipline

D.8. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 441.07.

IT IS FURTHER ORDERED that Ms. Gliszinski shall pay 80% of 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 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 be and hereby is closed as to Respondent Rachel Gliszinski.

Dated at Madison, Wisconsin on November 25, 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

Attachment: Summary Judgment Order dated October 18, 2013



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **RACHEL J. GLISZINSKI, L.P.N.**,
Respondent

SUMMARY JUDGMENT ORDER
DHA Case No. SPS-13-0012

ORDER 0003138

Division of Legal Services and Compliance Case No. 12 NUR 509

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

Rachel J. Gliszinski
8818 Oriole Lane
Windlake, WI 53185

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

Attorney Sandra L. Nowack
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Division of Legal Services and Compliance
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Madison, WI 53708-8935

PROCEDURAL HISTORY

These proceedings were initiated on March 6, 2013 when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), served a formal Complaint against Respondent Rachel Gliszinski, alleging that she was unfit or incompetent by reason of abuse of drugs and that she committed misconduct or unprofessional conduct. The Notice of Hearing informed Ms. Gliszinski that failure to file an Answer within 20 days could result in default judgment and in disciplinary action taken against her nursing license. An Answer was due from Ms. Gliszinski on or about March 26, 2013.

On March 20, 2013, Ms. Gliszinski filed a letter with the Division of Hearings and Appeals, requesting additional time to file an Answer, stating that her computer was broken and she needed to get documents from her computer. On April 1, 2013, a prehearing conference was held by telephone, the undersigned Administrative Law Judge (ALJ), presiding. Ms. Gliszinski had not yet filed an Answer. The ALJ granted her request to file an untimely Answer, giving her until April 8, 2013 to do so. The ALJ issued a Prehearing Conference Report and Scheduling Order on April 1, 2013, which among other things, again advised her that “[f]ailure to file an Answer may result in default being entered against Respondent.”

On the afternoon of April 5, 2013, the Friday before the Monday, April 8, 2013 deadline to file an Answer, Ms. Gliszinski sent an email to the Division’s attorney stating that on April 4, 2013, she was involved in a car accident and that her car was towed to a repair shop. She requested an additional week in which to file her Answer. The Division’s attorney forwarded Ms. Gliszinski’s email to the ALJ and stated that she did not object to a one-week extension. The ALJ again granted Ms. Gliszinski’s request for filing an Answer, setting a new deadline of Monday, April 15, 2013.

On Saturday, April 13, 2013, Ms. Gliszinski again emailed the ALJ noting that she “will not meet this deadline” of Monday, April 15, 2013 to file her Answer. Ms. Gliszinski again noted her car troubles, her unemployment status, and the fact that she did not have internet access at her home and had to go to the library to use the internet. After notifying the parties via email, the ALJ attempted to hold a status conference with the parties on April 15, 2013; however, Ms. Gliszinski did not answer the telephone and the ALJ therefore left her a voicemail. Ms. Gliszinski left a voicemail for the ALJ the following day, in which she explained that, in addition to her previously mentioned difficulties, there had been flooding in her home and that she did not hear the telephone on April 15, 2013 because her telephone had water damage and

did not ring loudly. Ms. Gliszinski also stated that she had been given a ride by a friend so she could purchase stamps and envelopes to file her Answer.

In an Order dated April 16, 2013, the ALJ granted a final extension for Ms. Gliszinski to file an Answer no later than April 22, 2013, noting, however, that Ms. Gliszinski had demonstrated a "disturbing disregard of the ALJ's orders and a failure to appreciate the potential severity of these disciplinary proceedings." On April 22, 2013, the Division received Ms. Gliszinski's Answer to the Complaint.

On April 24, 2013, during a telephonic prehearing conference with the undersigned ALJ, the Division requested an amended schedule, including permission to file a Motion for Summary Judgment. The ALJ granted the Division's request to file a Motion for Summary Judgment. In a scheduling order dated April 24, 2013, the ALJ cancelled the hearing and established briefing deadlines for the Division's motion for summary judgment, with the Division's motion due on June 14, 2013 and Ms. Gliszinski's response due on July 15, 2013.

Despite the ALJ's scheduling order requiring Ms. Gliszinski to file a response to the Division's motion for summary judgment no later than July 15, 2013, Ms. Gliszinski did not file a response. On July 25, 2013, the Division filed a Reply to Respondent's Failure to Respond to Motion for Summary Judgment, requesting that its motion for summary judgment be granted. On August 5, 2013, Ms. Gliszinski filed a letter with the ALJ stating that she was involved in a domestic abuse case where the father of her child was violent toward her, that she was in a transitional living center, that she did not intend to fail to file a response and that she was not sure what to do. The ALJ emailed the letter to the Division for a response and the Division's attorney responded via email on August 6, 2013 that she would not object to a one-week extension for a response although she also requested that, due to Ms. Gliszinski's record of crises and failure to cooperate with the investigation and proceedings, Ms. Gliszinski be required to

provide police reports or the injunction order related to the domestic violence incident. Ms. Gliszinski was copied on these emails.

On August 9, 2013, the ALJ issued an Amended Scheduling Order giving Ms. Gliszinski until August 16, 2013 to file and serve a response. On Saturday, August 17, 2013, Ms. Gliszinski sent the following email to the ALJ and Division counsel:

I just wanted to inform you that it is very unfair to get a letter two days before the division of hearings wants an answer. I feel that you are trying to set me up to fail. I received that letter two days before the August 16, 2013. I thought this was a joke on me. Is it?

On that same date, the ALJ responded to the parties by email, noting that the Notice extending the deadline was mailed on August 9, 2013 and should have been received by Ms. Gliszinski no later than August 12, 2013, that Ms. Gliszinski had been included in all of the emails regarding her failure to file a response and the Division's agreement to a one-week extension, and that Ms. Gliszinski had a history of failing to comply with deadlines. On August 22, 2013, the Division filed a Reply to Respondent's Failure to Respond to Motion for Summary Judgment, again requesting summary judgment in the Division's favor. Ms. Gliszinski never filed a response to the Division's motion for summary judgment.

UNDISPUTED MATERIAL FACTS

The following facts are set forth in the Division's Complaint and explicitly admitted in Ms. Gliszinski's Answer.

1. Ms. Gliszinski (dob February 24, 1978) is licensed in the State of Wisconsin as a practical nurse, having license number 305910-31, first issued on May 12, 2005 and current through April 30, 2013.

2. Ms. Gliszinski's most recent address on file with the Department is 8818 Oriole Lane, Windlake, WI 53185.

3. On January 26, 2011, Mr. Gliszinski called in a prescription order under a false name in an attempt to obtain Xanax, a Schedule IV controlled substance.

4. Ms. Gliszinski was arrested when she attempted to pick up the above-referenced prescription at the pharmacy.

5. On February 1, 2011, Ms. Gliszinski was admitted to the hospital for a 5-day in-patient treatment program at Rogers Memorial Hospital. She was diagnosed with Opioid Dependency.

7. On March 30, 2011, Ms. Gliszinski entered a guilty plea to the charge of Attempted Obtaining a Controlled Substance by Misrepresentation in Milwaukee County Circuit Court (Case No. 2011CF559) and entered into a deferred prosecution agreement.

8. On September 27, 2011, the Milwaukee County Circuit Court found that Ms. Gliszinski complied with the Deferred Prosecution Agreement and the court dismissed the case.

9. On July 12, 2011, Ms. Gliszinski was admitted to the Department's Professional Assistance Procedure (PAP) program, a confidential program for chemically impaired professionals.

The following fact is established through the Division's Complaint and Ms. Gliszinski's Answer and attachments to her Answer.¹

10. On October 18, 2012, Ms. Gliszinski was dismissed from PAP for not complying with program requirements regarding random drug tests, failing to attend AA/NA meetings and failing to submit reports in a timely manner. In her Answer, Ms. Gliszinski asserts that she did

¹ The Division argues that the assertions contained in the Division's Request to Admit, which include allegations regarding Ms. Gliszinski's failure to comply with the PAP program and allegations that she violated statutory and code provisions, should be deemed admitted due to Ms. Gliszinski's failure to respond to the Request to Admit, despite repeated reminders and opportunities to do so. Because the facts as found constitute sufficient proof of the alleged violations, this argument need not be addressed.

attend meetings but that she could not afford to pay for the drug tests after getting fired from her job and that she was only late once in submitting a report.

DISCUSSION AND CONCLUSIONS OF LAW

Standards Governing Summary Judgment.

“The summary judgment procedure as provided in s. 802.08, Stats., shall be available to the parties upon approval by the division or the administrative law judge.” Wis. Admin. Code § HA 1.10(2).

Pursuant to Wis. Stat. § 802.08, summary judgment “shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Wis. Stat. § 802.08(2). The purpose of the summary judgment procedure is to avoid trials when there is nothing to try. *Rollins Burdick Hunter of Wisconsin, Inc. v. Hamilton*, 101 Wis. 2d 460, 470, 304 N.W.2d 752 (1981). “When a motion for summary judgment is made and supported as provided in this section [§ 802.08], an adverse party may not rest upon the mere allegations or denials of the pleadings but the adverse party's response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue for trial.” Wis. Stat. § 802.08(3). “If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against such party.” *Id.*

“A motion for summary judgment may be made on the basis of the pleadings or other portions of the record in the case or it may be supported by affidavits and a variety of outside material.” *Tews v. NHI, LLC*, 2010 WI 137, ¶ 49, 330 Wis. 2d 389, 793 N.W.2d 860 (citation omitted). On a motion for summary judgment, the facts are construed in favor of the non-moving party. *DeHart v. Wis. Mut. Ins. Co.*, 2007 WI 91, ¶ 7, 302 Wis. 2d 564, 734 N.W.2d 394.

The Undisputed Facts Show that the Division is Entitled to Judgment as a Matter of Law with Respect to Whether Ms. Gliszinski Violated Wis. Stat. § 441.07(1)(c) and (d) and Wis. Admin. Code § N 7.03(2) and 7.04(1) and (2).

The Division alleges that Ms. Gliszinski is subject to discipline pursuant to Wis. Stat. § 441.07(1)(c) and (d) because she is unfit or incompetent by reason of abuse of drugs, as defined by § N 7.03(2) and because she engaged in misconduct or unprofessional conduct as defined by Wis. Admin. Code § N 7.04(1) and (2).

Wisconsin Stat. § 441.07(1)(c) and (d) provide:

441.07(1) The board may . . . revoke, limit, suspend or deny renewal of a license of . . . a licensed practical nurse, may revoke, limit, suspend or deny renewal of a certificate to prescribe drugs or devices granted under s. 441.16, or may reprimand a . . . licensed practical nurse, if the board finds that the person committed any of the following:

(c) Acts which show . . . licensed practical 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 7.03(2) provides: "Abuse of alcohol or other drugs" 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."

In her Answer to the Division's Complaint, Ms. Gliszinski expressly admits paragraphs 1-9 of the Complaint. Paragraphs 3-9 of the Complaint state that on January 26, 2011, Ms. Gliszinski called in a prescription order under a false name in an attempt to obtain Xanax, a Schedule IV controlled substance; that she was arrested when she attempted to pick up that prescription at the pharmacy; that on February 1, 2011, she was admitted to the hospital for a 5-day in-patient treatment for opioid dependency; that on February 22, 2011, she entered the dual diagnosis outpatient treatment program at Rogers Memorial Hospital and was diagnosed with opioid dependency; that on March 30, 2011, she entered a guilty plea to the charge of Attempted Obtaining a Controlled Substance by Misrepresentation and entered in to a Deferred Prosecution

Agreement; that on September 27, 2011, the Milwaukee County Circuit Court found that she had complied with the Deferred Prosecution Agreement and dismissed the criminal case against her; and that on July 12, 2011, she was admitted to the Department's Professional Assistance Procedure (PAP) program, a program for chemically impaired professionals.

In addition, Ms. Gliszinski admits in a May 5, 2011 letter she attaches to her Answer: "I started to self medicate to heal my pain. I was so out of control that I attempted to break the law. *After the doctor refused to refill my prescription, I began abusing my nursing privileges.*" (Attachment to Respondent's Answer, p. 16; Division's Exh. 6, p. 2) (emphasis added) Ms. Gliszinski also admits that she was dismissed from PAP and that she did not comply with program requirements regarding random drug tests and timely submission of reports.²

These facts, which are undisputed, establish that Ms. Gliszinski was unfit to practice nursing because she used drugs to the extent that such use impaired her ability to safely or reliably practice, in violation of Wis. Stat. § 441.07(1)(c) and Wis. Admin. Code § N 7.03(2).

These facts also establish that Ms. Gliszinski engaged in misconduct or unprofessional conduct in violation of Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(1) and (2). Wis. Stat. § 441.07(1)(d) authorizes the Wisconsin Board of Nursing (Board) to impose discipline when a licensed practical nurse commits "misconduct or unprofessional conduct." This phrase is defined in Wis. Admin. Code § N 7.04 as follows:

N 7.04 Misconduct or unprofessional conduct. As used in s. 441.07(1)(d), Stats., "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. "Misconduct or unprofessional conduct" includes, but is not limited to, the following:

(1) Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing. A certified copy of a judgment of conviction is prima facie evidence of a violation;

² Even without the facts contained in this paragraph, all of the violations alleged would be found.

(2) Administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law;

Ms. Gliszinski pled guilty to a charge of Attempted Obtaining a Controlled Substance by Misrepresentation for calling in a prescription order for Xanax, a Schedule IV controlled substance, using a fictitious name, with the intent to use the Xanax herself. The guilty plea constitutes sufficient evidence that she violated this law. Moreover, this law is substantially related to the practice of practical nursing. In addition, these facts establish that she supplied or obtained a drug other than in the course of legitimate practice or as otherwise prohibited by law. Thus, Ms. Gliszinski engaged in misconduct or unprofessional conduct, in violation of Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(1) and (2).

The Undisputed Facts do not Establish that the Division is Entitled to its Recommended Discipline or Costs as a Matter of Law.

The Division also requests that it be granted summary judgment on its recommended discipline and costs in this matter. The discipline which the Division requests is suspension of Ms. Gliszinski's license to practice nursing in accordance with the Board's standard practice impairment order, with its requirements for treatment, practice limitations, random drug screens, work reports and group support meetings. The Division requests that the indefinite suspension should be ordered stayed upon Ms. Gliszinski having proven to the Board's satisfaction that she has been in compliance with the terms of the impairment order for at least three months. The Division also argues that full costs of the disciplinary proceedings should be imposed on Ms. Gliszinski.

There is no statute, rule or case law that establishes, as a matter of law, that when certain factual findings are made or violations found, a particular discipline or percentage of costs are required. Rather, these determinations are discretionary, taking into account various considerations. With regard to discipline, the following three factors are to be considered in

making the discretionary determination as to discipline: (1) promotion of the licensee's rehabilitation; (2) protecting the public from other instances of misconduct; and (3) deterring other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976). With respect to imposition of costs, factors to consider include: (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 cooperation of the respondent; (5) any prior discipline; and (6) the fact that the Department is a program revenue agency, funded by other licensees. See *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI).

Although Ms. Gliszinski has not filed a response to the Division's motion for summary judgment, I nonetheless conclude that the issues of discipline and costs are inappropriate for summary judgment. In light of the discretionary nature of determining both discipline and costs, the exercise of which entails consideration of a wide variety of factors, and in view of the fact that no case law has been provided to or discovered by the ALJ demonstrating that summary judgment is appropriate on such discretionary determinations, I cannot conclude that the Division is entitled "as a matter of law" to the discipline and percentage of costs it requests, as is required to grant summary judgment under Wis. Stat. § 802.08. Therefore, a telephone status conference will be held as set forth in the Order section below, at which the parties shall inform the undersigned ALJ whether they wish to submit written arguments on the issues of discipline and costs (or rest on those arguments presented in the submissions already filed) or whether a hearing on the issues of discipline and costs is required.

ORDER

For the reasons set forth above, IT IS ORDERED that:

1. The Division's motion for summary judgment is granted with respect to the violations alleged in this case: the undisputed material facts establish that Ms. Gliszinski violated Wis. Stat. § 441.07(1)(c) and (d), Wis. Admin. Code § N 7.03(2) and 7.04(1) and (2) by being unfit or incompetent by reason of abuse of drugs and by engaging in misconduct or unprofessional conduct.

2. The Division's motion for summary judgment is denied with respect to discipline and costs because it has not been established that the Division is entitled to its recommendation on these issues as a matter of law.

3. A status conference will be held on October 30, 2013 at 10:30 a.m. to establish whether the issues of discipline and costs may be determined on the basis of the parties' written submissions (either as previously filed or to be filed) or whether a hearing is required on these issues, and if a hearing is required, to establish a date for such hearing.

Dated at Madison, Wisconsin on October 18, 2013.

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By: _____

Jennifer E. Nashold
Administrative Law Judge