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Before The
State Of Wisconsin
BOARD OF NURSING

In the Matter of the Disciplinary Proceedings
Against CORETTA HARRIS, R.N., Respondent

FINAL DECISION AND ORDER

Order No. **0003226**

Division of Legal Services and Compliance Case No.13 NUR 002

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 16th day of May, 2014.



Member
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **CORETTA HARRIS, R.N.**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-13-0045

0003226

Division of Legal Services and Compliance Case No. 13 NUR 002

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

Coretta Harris, R.N.
2739 North 44th Street
Milwaukee, WI 53210

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 Coretta Harris, R.N., alleging that Respondent was subject to discipline pursuant to Wis. Stat. § 441.07(b) and (c) and Wis. Admin. Code § N 7.03(2) because she was impaired by the use of alcohol to an extent that such use impaired her ability to safely or reliably practice.

The Division served Respondent on September 17, 2013 and on October 23, 2013 by sending a copy of the Notice of Hearing and Complaint to her last known addresses. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09, and failed to appear at the prehearing telephonic conference held before the Division of Hearings and Appeals on October 21, 2013.

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 make herself available, the undersigned administrative law judge (ALJ) found Respondent to be in default. On October 21, 2013, the ALJ issued a Notice of Default against Respondent and ordered that the Division file a written recommendation for discipline and costs by November 1, 2013. On October 23, 2013, the Division moved for an extension of time in which to file a written recommendation for discipline and costs until November 29, 2013, which was granted by the ALJ. Consistent with the Notice of Default and Order Granting Extension issued by the ALJ, the Division filed a written recommendation for discipline and costs to be imposed on Respondent. 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 1-8 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Coretta Harris, R.N. (DOB May 15, 1974) is licensed in the State of Wisconsin as a professional nurse, having license number 149155-30, first issued on November 11, 2004 and current through February 28, 2014.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 2739 North 44th Street, Milwaukee, Wisconsin 53210.

3. Upon information and belief, Respondent may currently reside at 1530 West 51st Avenue, Phoenix, Arizona 85043 or 1360 North 43rd Avenue, Phoenix, Arizona 85009.

4. At all times relevant to this proceeding, Respondent was working as a traveling nurse at a medical center (Center) in Bullhead City, Arizona.

5. On or about December 8, 2012, Respondent reported to work at Center. When Respondent reported to work, her behavior was normal and she did not smell of alcohol.

6. During her shift, Respondent's motions became slow, her speech became deliberate and her co-workers noticed that she smelled of alcohol. She was also observed as having a loss of coordination by bumping into things at Center.

7. Center conducted a drug and alcohol test. Respondent tested positive for alcohol. Specifically, Respondent's ETOH level was 35 mg/dL, which is outside of the reference range.

8. Respondent was terminated from employment at Center.

Facts Related to Default

9. Pursuant to Wis. Admin. Code § SPS 2.08, the Complaint and Notice of Hearing in this matter was served on Respondent by both certified and regular mail, on September 17, 2013

to the Milwaukee address Respondent had on file with the Department, and on October 23, 2013, to two addresses in Phoenix, Arizona. 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." The Complaint and Notice of Hearing was returned to the Department from all three addresses, with no forwarding address.

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

11. Following expiration of the 20-day time period to file an Answer, on October 7, 2013, the ALJ issued a Notice scheduling a telephone prehearing conference for October 21, 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 16, 2013.

12. The Notice of Prehearing Conference was sent to Respondent at the same three addresses referenced in Finding of Fact 9, above, the Milwaukee address on file with the Department and the two addresses in Phoenix, Arizona. The two sent to Phoenix, Arizona were returned as undeliverable, with no forwarding address. The Notice sent to Milwaukee was never returned to the Division of Hearings and Appeals.

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

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

15. On October 21, 2013, the ALJ issued a Notice of Default and Order, ordering the Division to serve no later than November 1, 2013 a recommended proposed decision. The Notice was sent to Respondent at the same three addresses noted above. The two notices sent to the Arizona addresses were returned to the Division of Hearings and Appeals; however, that sent to the Milwaukee address was not returned. On October 23, 2013, the Division moved for an extension of time in which to file a written recommendation for discipline and costs until November 29, 2013, which was granted by the ALJ.

16. The Division timely filed its recommended proposed decision and order.

DISCUSSION AND CONCLUSIONS OF LAW

Default

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." Further, Wis. 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 17, 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, as well as to two other potential addresses. 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.

Respondent also failed to appear at the prehearing conference held on October 21, 2013 after being served with the Notice of Telephone Prehearing Conference at her last known address and failed to provide a telephone number at which she could be reached for the conference as requested.

Accordingly, she is in default and 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 Wis. Admin. Code § N 7.03(2)

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.

Pursuant to Wis. Admin. Code § N 7.03(2), "[a]buse 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."

The facts contained in the Complaint, which are undisputed, unequivocally establish that Respondent used alcohol to an extent that such use impaired her ability to safely or reliably practice. During her shift at Center, co-workers noticed the smell of alcohol on Respondent and observed that Respondent's motions became slow, her speech became deliberate and she began bumping into things. When Center conducted a drug and alcohol test, Respondent tested positive for alcohol. Her ETOH level was 35 mg/dL, which was outside of the reference range. As a result, Respondent was terminated from employment at Center.

These facts establish that Respondent violated Wis. Stat. § 441.07(1)(b) and(c) and Wis. Admin. Code § N 7.03(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 that Respondent's license to practice as a nurse in the State of Wisconsin be suspended for an indefinite period. The Division further requests that Respondent's privilege to practice as a nurse in Wisconsin under the authority of another state's license pursuant to the Nurse Licensure Compact be suspended for an indefinite period.

This recommendation is appropriate and adopted in this case. Respondent's conduct was serious, being intoxicated while on duty as a nurse. It is obvious that Respondent has a serious problem with alcohol, is in need of rehabilitation, and that patients need protection from her until she successfully addresses her alcohol problem. This discipline will also deter others in Respondent's profession from engaging in such conduct.

Costs

The Division recommends that full costs be assessed against Respondent for the disciplinary proceedings against her. 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, Respondent should be assessed the full amount of recoverable costs in this case.

ORDER

Accordingly, IT IS ORDERED that the license of Coretta Harris to practice as a nurse in the State of Wisconsin is SUSPENDED for an indefinite period from the date of this Order. 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
Telephone: (608) 267-3817
Fax: (608) 266-2264**

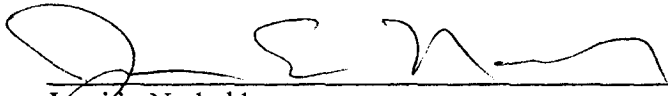
IT IS FURTHER ORDERED that the terms of this Order are effective the date the Final Decision and Order is signed by the Board.

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Coretta Harris, R.N.

Dated at Madison, Wisconsin on this 14th day of November, 2013.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Tel. (608) 266-7709
Fax (608) 264-9885

By:


Jennifer Nashold
Administrative Law Judge