

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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**Before the
State Of Wisconsin
Board of Nursing**

In the Matter of the Disciplinary Proceedings
Against Karyn Kaiser, L.P.N., Respondent

FINAL DECISION AND ORDER

Order No. 0003782

Division of Legal Services and Compliance Case No. 14 NUR 007

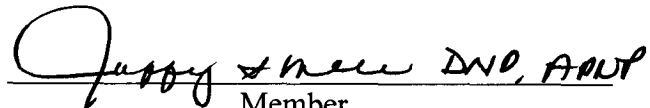
The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 12th day of March, 2015.


Member
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against KARYN M. KAISER, Respondent

DHA Case No. SPS-14-0097
DLSC Case No. 14 NUR 007

PROPOSED DECISION AND ORDER

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

Karyn M. Kaiser
10724 Illinois Avenue
Hayward, WI 54843

Wisconsin Board of Nursing
P.O. Box 8366
Madison, WI 53708-8366

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

Attorney Amanda Florek
Department of Safety and Professional Services
Division of Legal Services and Compliance
P. O. Box 7190
Madison, WI 53707-7190

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 Karyn M. Kaiser, L.P.N., alleging that Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code § N 7.04(2),¹ by administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law and that she was therefore subject to discipline pursuant to Wis. Stat. § 441.07(1)(b) and (d) (2011-2012). The Division served Respondent on December 2, 2014, by sending a copy of the Notice of Hearing and Complaint to Respondent's last known address. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS

¹ All references to Wis. Admin. Code § N 7.04 refer to the code as it existed prior to changes to that provision which were effective August 1, 2014.

2.09, and failed to appear at the telephone prehearing conference held before the Division of Hearings and Appeals on January 5, 2015.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to appear at the prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default. On January 5, 2015, the ALJ issued a Notice of Default and Order against Respondent. Consistent with the notice, the Division filed a recommended proposed decision on January 26, 2015.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1-5 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Karyn M. Kaiser, L.P.N., (D.O.B. September 22, 1977) is licensed in the State of Wisconsin as a practical nurse, having license number 312364-31, first issued on March 10, 2010 and current through April 30, 2015.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 10724 Illinois Avenue, Hayward, Wisconsin 54843.

3. On December 31, 2013, Respondent admitted to a City of Hayward police officer that around June and July 2013, she diverted oxycodone and hydrocodone, which should have been wasted, for personal use.

4. On January 31, 2014, Respondent was charged in Sawyer County Circuit Court case number 2014CM054 with three counts of obtaining a prescription drug by fraud, in violation of Wis. Stat. § 450.11(7)(a).

5. On April 29, 2014, Respondent pled no contest and was found guilty of two counts of obtaining a prescription by fraud. The third count was dismissed but read in.

Facts Related to Default

6. The Complaint and Notice of Hearing in this matter were served on Respondent on December 2, 2014, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing informed Respondent: "If you do not provide a proper Answer within twenty (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."

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

8. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for January 5, 2015. Notice of the prehearing conference was

sent to both parties on December 22, 2014, with instructions that Respondent provide the ALJ with a telephone number at which Respondent could be reached for the conference no later than December 29, 2014. The Notice further informed Respondent: “A respondent’s failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent.”

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

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

11. On January 5, 2015, the ALJ issued a Notice of Default and Order which concluded that Respondent was in default and required the Division to serve no later than January 26, 2015 a recommended proposed decision and order.

12. The Division filed its recommended proposed decision and order on January 26, 2015.

13. Respondent did not file a response to either the Division’s submission or to the Notice of Default and Order.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the January 5, 2015 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 January 5, 2015. *See* Wis. Admin. Code §§ SPS § 2.09(4) and 2.14; Wis. Admin. Code § HA 1.07(3). Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

Violations of Wisconsin Statute and Administrative Code

The Board has jurisdiction over this matter pursuant to Wis. Stat. § 441.07. Following an investigation and disciplinary hearing, the Board may revoke, limit or suspend the license of a licensed professional nurse if the Board determines that the nurse has violated a rule of the Board or has engaged in misconduct or unprofessional conduct. Wis. Stat. § 441.07(1)(b) and (d), respectively (2011-2012).

The Board has defined “misconduct or unprofessional conduct” 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 “[a]dministering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law.” Wis. Admin. Code § N 7.04(2).

There is no dispute that during the time period of June and July 2013, Respondent diverted oxycodone and hydrocodone, which should have been wasted, for her own personal use.

It is also undisputed that on April 29, 2014, Respondent pled no contest and was found guilty of two counts of obtaining a prescription by fraud.

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). Pursuant to Wis. Stat. § 961.16(2)(a)7., hydrocodone is a schedule II controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(2). In diverting these controlled substances, which should have been wasted, for her own use, Respondent obtained the drugs “other than in the course of legitimate practice or as otherwise prohibited by law,” thereby engaging in misconduct or unprofessional conduct under Wis. Stat. § 441.07(1)(d) (2011-2012) and Wis. Admin. Code § N 7.04(2). This conduct also constitutes a violation of subchapter I of Chapter 441 of the Wisconsin Statutes and of “any rule adopted by the board under the authority of this subchapter [subchapter I]” under Wis. Stat. § 441.07(1)(b) (2011-2012). As a result of this conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1)(b) and (d) (2011-2012).

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 be reprimanded and that her license be limited for a period of two years to include following: (1) drug testing at least 49 times per year; (2) obtaining an AODA assessment with an evaluator and complying with all requirements of the AODA assessment; (3) showing a copy of the final decision and order in this matter to all employers before engaging in employment; (4) preventing Respondent from working anywhere where she has access to controlled substances; (5) requiring Respondent to take four hours of education on the topic of ethics; and (6) requiring Respondent to practice only in Wisconsin pursuant to the Uniform Nurse License Compact during the pendency of all limitations.

The discipline recommended by the Division is warranted. Respondent diverted controlled substances, which should have been wasted, for her personal use. As a result, she was criminally convicted of obtaining a controlled substance by fraud. Furthermore, Respondent failed to make herself available for these proceedings. Due to her lack of communication, it is uncertain if she is still using illegally obtained drugs, if she has engaged in treatment, if she is currently working with access to controlled substances or if she is otherwise being monitored.

Respondent’s rehabilitation and the protection of the public require that she undergo drug testing to ensure she is not taking unprescribed medications or other illegal drugs. Furthermore, Respondent needs an AODA assessment to determine if she is dependent on drugs or other substances and if additional treatment is needed. In order to protect the public, Respondent should not have access to controlled substances, her employers should be notified of the requirements ordered in this case, and her practice should be restricted under the Nurse Licensure Compact to only practice in Wisconsin during the pendency of the limitations. Respondent’s rehabilitation also requires that she receive a reprimand so that she understands the seriousness of her conduct. A reprimand and the license limitations set forth above will also serve to deter others from engaging in similar conduct.

This discipline is also consistent with prior Board decisions. In *In the Matter of Disciplinary Proceedings Against Catherine M. Cowart, R.N.*, Order No. 0003626 (Jan. 8, 2015), a nurse, while visiting a former patient, stole the patient's controlled substances for her personal use. The nurse was criminally convicted of possession of a controlled substance and theft of moveable property. She had already undergone an AODA assessment and the professional who assessed her diagnosed her with opioid abuse but ruled out opioid dependence. The Board reprimanded the nurse and limited her license for two years. The license limitations included drug testing at least 49 times a year, showing a copy of the order to all employers before engaging in employment, and no access to controlled substances. The Board also required the nurse to obtain education on the topic of ethics and boundaries. Finally, the Board required her to practice only in Wisconsin pursuant to the Uniform Nurse Licensure Compact during the pendency of all of the limitations.

Similarly, in *In the Matter of Disciplinary Proceedings Against Monica J. Stout, R.N., A.P.N.P.*, Order No. 0003621 (Jan 8, 2015), a nurse diverted Vicodin from a facility and used it to treat her own pain. The Board reprimanded the nurse and limited her license for two years. The limitations included drug testing at least 49 times a year, showing a copy of the order to all employers before engaging in employment, no access to controlled substances, and education on the topic of ethics and the topic of medication dispensing. The Board also required the nurse to practice only in Wisconsin pursuant to the Uniform Nurse License Compact during the pendency of all limitations.

In the Matter of Disciplinary Proceedings Against Tracy M. Majerle, R.N., Order No. 0003459 (Oct. 9, 2014), a nurse diverted a prescription drug to help with wakefulness. The nurse was criminally convicted of theft of moveable property and negligent abuse of patients—no harm. The Board reprimanded the nurse and limited her license for two years. The limitations included drug testing at least 49 times a year, showing a copy of the order to all employers before engaging in employment, no access to controlled substances, and education on the topic of ethics. The Board also required the nurse to practice only in Wisconsin pursuant to the Uniform Nurse License Compact during the pendency of all limitations.

Because the discipline recommended by the Division best advances the objectives of *Aldrich* and is consistent with prior Board decisions, it is ordered in this case.

Costs

The Division 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 this 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, D.C.*, 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. Respondent has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven, or that certain factual findings were investigated and litigated that were unnecessary. Diverting medications from patients or facilities is a danger not only to patients and Respondent but also to the public.

I also note that Respondent has not participated in any way in these proceedings. Finally, given the fact that the Department is a “program revenue” agency, whose operating costs are funded by the revenue received for licensees, fairness here dictates imposing the costs of disciplining Respondent upon Respondent and not fellow members of the nursing profession who have not engaged in such misconduct.

ORDER

Accordingly, IT IS HEREBY ORDERED:

1. Respondent is REPRIMANDED.
2. Respondent’s practical nursing license and her privilege to practice in Wisconsin pursuant to the Nurse Licensure Compact are LIMITED as follows:
 - a. For a period of at least two years from the date of this Order:
 - i. Respondent shall enroll and participate in a drug and alcohol monitoring program which is approved by the Department (Approved Program).
 - ii. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
 1. Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 2. Production of a urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five hours of notification of a test.
 3. 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, Respondent 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.
 - iii. Respondent 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. Respondent shall disclose her drug history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent 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 Respondent's treatment with, and provide copies of treatment records to, the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.

- iv. Respondent shall report to the Department Monitor all prescription medications and drugs taken by Respondent. 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, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.
- v. Respondent 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, create false positive screening results, or interfere with Respondent's treatment and rehabilitation, shall not be taken unless ordered by a physician, in which case the drug must be reported as described in the paragraph 2(a)iv.
- vi. All positive test results are presumed valid and may result in automatic suspension of licensure by the Board or the Board's designee. Respondent must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.
- vii. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Respondent 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.
- viii. Respondent shall not work as a nurse or other health care provider in a setting in which she has access to controlled substances.
- ix. Respondent shall provide her nursing employers with a copy of this Order before engaging in any nursing employment.
- x. While working at least half-time as a nurse, Respondent shall arrange for her nursing employer(s) to send to the Department Monitor quarterly reports, reporting the terms and conditions of her employment and evaluating her work performance.
- xi. Respondent, at her own expense, shall obtain an AODA assessment with an evaluator, pre-approved by the Board or its designee, who has experience

conducting these assessments. Respondent shall comply with all requirements of the AODA assessment.

3. 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 7190
Madison, WI 53707-7190**

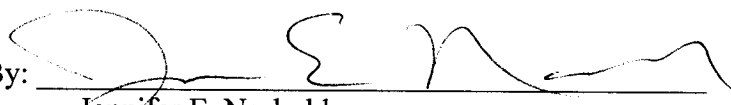
4. The terms of this Order are effective the date the Final Decision and Order is signed by the Board.

IT IS FURTHER ORDERED that the above-captioned matter is hereby closed as to Respondent Karyn M. Kaiser.

Dated at Madison, Wisconsin on February 10, 2015.

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 E. Nashold
Administrative Law Judge