

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov

**STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING**

**IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST**

**FINAL DECISION AND ORDER
WITH VARIANCE**

**STEPHANIE Y. GAINES, L.P.N.,
RESPONDENT.**

DHA Case No. SPS-15-0086

DLSC Case No. 14 NUR 497 **0004686**

BACKGROUND

On February 9, 2016, Administrative Law Judge Jennifer Nashold (ALJ), Division of Hearings and Appeals, issued a Proposed Decision and Order (PDO) in the above referenced matter. The PDO was mailed to all parties. On February 26, 2016, the Division of Legal Services and Compliance (Division) filed an objection, requesting the Board of Nursing (Board) add citations to specific Wisconsin Statutes and appellate case law regarding the imposition of costs. Respondent did not file a response to the Division's objections. On April 14, 2016, the Board met to consider the merits of the PDO and the stated objection. The Board voted to approve the PDO with variance. The PDO is attached hereto and incorporated in its entirety into this Final Decision and Order with Variance.

VARIANCE

Pursuant to Wis. Stat. §§ 440.035(1m) and 441.07(1g), the Board is the regulatory authority and final decision maker governing disciplinary matters of those credentialed by the Board. The matter at hand is characterized as a class 2 proceeding pursuant to Wis. Stat. § 227.01(3)(b). The Board may make modifications to a PDO, in a class 2 proceeding, pursuant to Wis. Stat. § 227.46(2), provided the Board's decision includes an explanation of the basis for each variance.

In the present case, the Board adopts the PDO in its entirety except for the following variance:

1. In the section titled, "DISCUSSION AND CONCLUSIONS OF LAW," under the subsection titled "Costs" found on page ten (10) of the PDO, the Board removes all three paragraphs in their entirety and the following is substituted.

Costs

The Board has authority to assess costs for these disciplinary proceedings pursuant to Wis. Stat. § 440.22(2), which reads in part:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining

board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder.

The Board is not required to go through any particular analysis when determining whether to assess all or part of the costs of this proceeding against the Respondent. Nevertheless, guidance can be found in *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. In *Noesen*, the Court opined:

Under Wis. Stat. § 440.22(2), the Board may, in its discretion, "assess all or part of the costs of the proceeding" against the licensee if the Board takes disciplinary action as a result. We give due weight to the Board's exercise of discretion. Wis. Stat. § 227.57(10). In reviewing the exercise of discretion, we look to determine whether the decision maker examined the relevant facts, applied the proper standard of law, and reached a reasonable conclusion. *Doersching*, 138 Wis. 2d at 328.

Id. ¶ 30. In addition to the above mandatory authority, in previous orders, the Board has considered the following non-mandatory factors to aid in determining if all or part of the costs should be assessed against a Respondent:

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 parties;
4. The respondent's cooperation with the disciplinary process;
5. Prior discipline, if any;
6. The fact that the Department of Safety and Professional Services (DSPS) is a "program revenue" agency; and
7. Any other relevant circumstances.

In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz (LS 0802183 CHI). In considering these factors, the Board has the discretion to give each factor the weight appropriate given present circumstances. In this case, the Board finds that the imposition of one hundred percent (100%) of the costs is warranted.

The Division has proven all counts alleged. The factual allegations were deemed admitted and there is no argument that the Division litigated any counts unnecessarily. Respondent's misconduct is very serious. Respondent used her position as a nurse to take advantage of a hospitalized patient. Respondent stole the patient's personal information, used his bank account to pay her bills through an online banking system, stole checks from his checkbook, forged checks, cashed the checks (or had a family member cash them), and used the patient's social security number to open a fraudulent credit card to buy personal items without the intention of paying for them.

Due to the particularly serious misconduct, the level of discipline requested and imposed is the most serious discipline allowable – revocation of Respondent's right to license renewal and her right to practice nursing pursuant to the Nurse Licensure Compact. In addition, Respondent



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Stephanie Y. Gaines, L.P.N., Respondent

DHA Case No. SPS-15-0086
DLSC Case No. 14 NUR 497

PROPOSED DECISION AND ORDER

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

Stephanie Gaines
3035 N. 45th Street
Milwaukee, WI 53210

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 L. 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 Stephanie Y. Gaines, L.P.N. (Respondent), alleging that Respondent engaged in six counts of unprofessional conduct.¹

¹ Of the six counts charged as “unprofessional conduct,” only the first two are actually defined as unprofessional conduct in the administrative code. The others are simply violations of Wis. Admin. Code § N 7.03. The six counts are as follows: (1) “Violating, or aiding and abetting a violation of any law substantially related to the practice of . . . practical nursing,” Wis. Admin Code § N 7.04(1); (2) “Obtaining or attempting to obtain anything of value from a patient without the patient’s consent,” Wis. Admin. Code § N 7.04(12); (3) “Violating, or aiding and abetting a violation of law substantially related to the practice of practical nursing,” Wis. Admin. Code § N 7.03(2); (4) “[M]isappropriating [or] obtaining . . . money or property from a patient or a patient’s family,” Wis. Admin. Code § N 7.03(4)(a); (5) “Violating any term, provision, or condition of any order of the board,” Wis. Admin. Code § N 7.03(1)(g); (6) “Obtaining, possessing or attempting to obtain or possess a drug without lawful authority,” Wis. Admin. Code § N 7.03(8)(e). Counts one and two refer to Wis. Admin. Code § N 7.04 as it existed before August 1, 2014.

The Division mailed the Complaint and Notice of Hearing to the address on file with the Department via regular and certified mail on October 8, 2015. The U.S. Post Office attempted to forward the certified copy to the address they had on record. Respondent failed to claim the certified mail. On November 3, 2015, the certified mail was returned to the Department. Respondent failed to file an Answer to the Complaint.

On October 28, 2015, the undersigned Administrative Law Judge (ALJ) issued a Notice of Telephone Prehearing Conference which set a telephone hearing conference for November 9, 2015. Respondent was required to provide a telephone number to the ALJ no later than November 4, 2015. Respondent failed to provide a telephone number. Respondent failed to appear at the telephone prehearing conference, whereupon the Division moved for default judgment based on Respondent's failure to appear and failure to file an Answer to the Complaint.

On November 9, 2015, the ALJ issued a Notice of Default and Order against Respondent and ordered that the Division file a recommended proposed decision and order no later than December 9, 2015. The Division timely filed its submission.

FINDINGS OF FACT

Findings of Fact 1-53 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Stephanie Y. Gaines, L.P.N., is licensed in the State of Wisconsin as a practical nurse, having license number 313284-31, first issued on October 20, 2010. This license expired on April 30, 2015, and has not been renewed. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew upon payment of a fee until April 29, 2020.

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 2902 North 48th Street, Milwaukee, Wisconsin 53210.

Prior discipline

3. On June 12, 2014, in case number 12 NUR 447, the Board of Nursing (Board) found that Respondent had committed medication documentation errors and failed to document pain assessments in the nurse's notes.

4. The Board ordered Respondent to complete three hours of education on the topic of medication administration and documentation and three hours of education on the topic of ethics, within ninety days of the date of the order.

5. The Board also ordered Respondent to pay costs of the proceeding within 180 days.

6. On January 8, 2015, Respondent's license was suspended for failure to pay the costs of the proceeding and for failure to complete the education as ordered in case number 12 NUR 447. Respondent's license has remained suspended since that time.

7. At all times relevant to this proceeding, Respondent worked as a practical nurse at Clement Manor in Greenfield, Wisconsin.

8. Resident H.M. resided in an apartment at Clement Manor.

9. Beginning on July 9, 2014, Resident H.M. was hospitalized for an extended period of time. Respondent was aware of this hospitalization.

10. Due to his poor health, Resident H.M. has had a power of attorney since 2002.

11. Resident H.M.'s power of attorney is his grandnephew, J.G.

12. All of Resident H.M.'s personal care providers are paid through Clement Manor.

13. TCF Bank has a branch location at Clement Manor. The staff at the Clement Manor branch were familiar with H.M.

14. J.G. pays Resident H.M.'s other bills using online bill pay through TCF Bank.

15. Resident H.M.'s checkbooks remained in his apartment at Clement Manor during his hospitalization.

16. Respondent had access to all apartments, including Resident H.M.'s apartment, based on her employment as a nurse at the Clement Manor.

17. Based on her employment at Clement Manor, Respondent was aware that Resident H.M. was hospitalized and that no one was staying in his Clement Manor apartment.

18. On July 15, 2014, S.R. (Respondent's daughter) opened a checking account at TCF Bank using a \$6,000.00 check made payable to her from Resident H.M.'s account.

19. The check was dated July 13, 2014.

20. The memo line of the check read, "caretaker to pay my bills," and was signed with Resident H.M.'s name.

21. S.R. was able to get \$5,000.00 back in cash and deposited the remaining \$1,000.00 in her new TCF Bank account.

22. When J.G. reviewed the signature on the check, he stated that it was not his great-uncle's signature.

23. On July 17, 2014, S.R. withdrew \$950.00 from her TCF Bank checking account.

24. On July 21, 2014, S.R. withdrew the remaining \$50.00 from her TCF Bank checking account.

25. On July 24, 2014, S.R. cashed a check made payable to her for \$2,000.00 and drawn off Resident H.M.'s account.

26. This check was dated July 23, 2014 and the memo line said, "caretaker," and was signed with Resident H.M.'s name.

27. When J.G. reviewed the signature on the check, he stated that it was not his great-uncle's signature.

28. On July 28, 2014, Respondent cashed a check made payable to her for \$900.00 drawn off H.M.'s account.

29. The check was dated July 24, 2014 and the memo line of the check said, "personal care worker," and was signed with Resident H.M.'s name.

30. When J.G. reviewed the signature on the check, he stated that it was not his great-uncle's signature.

31. Respondent endorsed the check on the back and listed her correct driver's license number.

32. On July 28, 2014, S.R. attempted to cash a check made payable to her for \$8,000.00 drawn off Resident H.M.'s account.

33. The memo line of this check said "caregiver."

34. The teller refused to cash the check due to suspicious activity. The teller was familiar with Resident H.M. because she worked at the branch located in Clement Manor. The teller was aware that residents of Clement Manor do not pay for private caregivers and that Clement Manor provides all of the residents' care.

35. Subsequently, S.R. attempted to cash this check at another branch location but the check was denied and retained due to the previous teller notating the account had suspicious activity.

36. On July 31, 2014, at 11:04 a.m., J.G. received an email that there were modifications to his great-uncle's online account. One of the changes was an added payee. The payee's name was S.R. and the payment was to be made directly to S.R.'s TCF Bank account.

37. J.G. did not add any payees to his great-uncle's online banking account on July 31, 2014.

38. Additionally, Resident H.M. was still in the hospital and was not capable of using the online banking account.

39. On July 31, 2014, at 11:13 a.m., J.G. received an email that there was another modification to his great-uncle's online account. This change was adding another payee. The payee was Respondent and the payment was to be made directly to her personal bank account.

40. On July 31, 2014, at 11:59 a.m., J.G. received an email that a third payee was added to his great-uncle's online account. This payee was listed as "Drivetime" with an account number.

41. Police investigation revealed that the "Drivetime" account number was a car loan in Respondent's name.

42. After receiving the above online banking notifications, J.G. contacted the TCF Bank branch manager regarding suspected fraud.

43. Resident H.M. was not physically capable of writing out checks or using the online banking system.

44. On August 9, 2014, Respondent filled out an online credit card application in Resident H.M.'s name. Submitting this credit application required Respondent to enter H.M.'s social security number and other personal information. All of this personal information was kept in H.M.'s apartment. Respondent obtained the information after she entered H.M.'s apartment while H.M. was hospitalized. Respondent listed herself as an authorized user on the credit card.

45. Respondent charged several thousand dollars on the fraudulent credit card before the fraud was detected and the card was closed for fraudulent activity.

46. On August 14, 2014, a police officer interviewed S.R. as part of an investigation. S.R. stated she got the checks from her mother (Respondent). S.R. stated that Respondent brought the checks home from work at Clement Manor and that the checks were blank. S.R. told the police officer that her mother filled out the checks and told her, "See if you can cash it." S.R. also admitted to cashing two of the checks.

47. Respondent did not have permission from Resident H.M. or his power of attorney to enter Resident H.M.'s apartment, obtain anything from the apartment, issue checks drawn off H.M.'s checking account, open a credit card in Respondent's name, or charge anything to a credit card issued to H.M.

48. Respondent forged Resident H.M.'s name on several checks and fraudulently obtained a credit card in Resident H.M.'s name.

49. On June 9, 2015, in Milwaukee County Circuit Court case number 2014CF3822, Respondent was convicted of two counts of forgery-uttering, felony, in violation of Wis. Stat. § 943.38(2), and one count of unauthorized use of personal identifying information to obtain money, felony, in violation of Wis. Stat. § 943.201(2)(a).

50. On January 4, 2015, Respondent was arrested for violating the terms of her bail from the above-mentioned case. During the arrest, police found hydrocodone, lorazepam and a tablet of morphine.

51. Respondent admitted to the police officer that she did not have a current prescription for morphine.

52. Respondent told the police officer that she had a prescription for hydrocodone and lorazepam; however, these prescriptions could not be verified.

53. On January 5, 2015, in Ozaukee County Circuit Court case number 2015CF004, the Ozaukee County District Attorney charged Respondent with one count of possession of narcotic drugs, in violation of Wis. Stat. §§ 961.41(3g)(am) and 939.50(3)(i); one count of felony bail jumping, in violation of Wis. Stat. §§ 946.49(1)(b) and 939.50(30)(h); and one count of possession of a controlled substance, in violation of Wis. Stat. §§ 961.41(3g)(b) and 939.61(2).

54. Official notice is taken that, according to the on-line website, Wisconsin Court System circuit Court Access, on October 29, 2015, Respondent pled guilty to felony possession of narcotic drugs and felony bail jumping, and a judgment of conviction for these offenses was entered.

Facts Related to Default

55. The Complaint and Notice of Hearing in this matter were served on Respondent on October 8, 2015, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing instructed Respondent: "If you do not provide a proper Answer within twenty (20) days, you will be found 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."

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

57. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for November 9, 2015. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which she could be reached for the conference no later than November 4, 2015. The Notice instructed Respondent: "The Respondent's failure to appear at the scheduled conference or hearing may result in default judgment being entered against the Respondent."

58. Respondent failed to provide a telephone number, as required by Wis. Admin. Code § HA 1.07(3)(c), and could not be reached for the prehearing conference.

59. On November 9, 2015, the prehearing conference was held. Respondent did not appear. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). The ALJ granted the motion for default.

60. On November 9, 2015, the ALJ issued a Notice of Default and Order which required the Division to file and serve no later than December 9, 2015, a recommended proposed decision and order.

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

62. Respondent did not file a response to the ALJ's Notice of Default or to the Division's recommended proposed decision and order.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the November 9, 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 November 9, 2015. As a result, an order may be entered against her on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violations

Following an investigation and disciplinary proceedings, if the Board determines that a practical nurse has violated Chapter 447, subchapter I, of the Wisconsin Statutes or any rule adopted by the Board under the authority of that subchapter, or that the nurse has committed unprofessional conduct, it may revoke, limit, or suspend the nurse's license or may reprimand the nurse. Wis. Stat. § 441.07(1g)(b) and (d), respectively.

As shown below, Respondent engaged in unprofessional conduct under Wis. Stat. § 441.07(1g)(d) and Wis. Admin. Code § N 7.04(2), and violated various other administrative rules pertaining to her profession under Wis. Stat. § 441.07(1g)(b).

Respondent violated Wis. Admin. Code § N 7.04(1), which at the time of her conduct, prohibited "[v]iolating, or aiding and abetting a violation of any law substantially related to the practice of . . . practical nursing." In June of 2015, Respondent was convicted of two counts of forgery-uttering, a felony, and one count of unauthorized use of personal identifying information to obtain money, also a felony. The circumstances surrounding these convictions were substantially related to Respondent's practice as a nurse. Respondent used her knowledge from working as a nurse at Clement Manor to take advantage of a patient who had been hospitalized. Respondent knew, through the course of her employment, that the patient was not home and would not return to his apartment for an extended period of time. Respondent went into the patient's apartment to steal his personal information, used his account information to pay her bills through the online banking system, stole checks from his checkbook, and forged checks and cashed them (or had a family member cash them). The elderly patient she stole from was a vulnerable person who trusted the nurses at Clement Manor to provide care to him. Respondent used her position as a nurse to obtain goods from the patient for her own use, without the patient's consent. Therefore, Respondent's felony convictions are substantially related to her practice as a practical nurse and her conduct violates Wis. Admin. Code § N 7.04(1).

Respondent also violated Wis. Admin. Code § N 7.04(12), which, at the time of her conduct, prohibited "obtaining or attempting to obtain anything of value from a patient without the patient's consent." Respondent stole checks from a patient, H.M. She forged the checks and

cashed them for monetary gain. H.M. did not provide Respondent with consent to enter his apartment while he was in the hospital or to take or write checks on his behalf. Respondent therefore violated Wis. Admin. Code § N 7.04(12).

Respondent also violated Wis. Admin. Code § N 7.03(2), which prohibits “violating, or aiding and abetting a violation of law substantially related to the practice of practical nursing.” After August 1, 2014, when the new nursing code went into effect, Respondent used the patient’s social security number to obtain a fraudulent credit card and she used the credit card to buy personal items with no intention of paying for the items. As a result of Respondent’s conduct, she was convicted of two felony counts of forgery-uttering and one count of unauthorized use of personal identifying information to obtain money. This conduct constitutes a violation of Wis. Admin. Code § N 7.03(2).

Respondent violated the law again when she unlawfully possessed narcotic drugs, for which she was charged and convicted. During Respondent’s arrest for bail jumping, she was found in possession of narcotics for which she did not have a prescription. During the course of employment as a nurse, a person has access to several narcotics. Specifically, dispensing and administering narcotics is a large part of nursing employment. Therefore, while working as a nurse Respondent has the opportunity to obtain drugs without lawful authority. It is not known where Respondent’s narcotics came from because she did not participate in these proceedings. Thus, there is the possibility that she took them from a place of nursing employment. The fact that nursing employment provides Respondent with the opportunity to unlawfully obtain narcotics, and that Respondent may have done so with respect to the narcotics found in her possession during her arrest, makes her violation of this law substantially related to the practice. *County of Milwaukee v. Labor and Industry Review Commission*, 139 Wis. 2d 805, 407 N.W.2d 908 (1987). Thus, Respondent violated Wis. Admin. Code § N 7.03(2) by unlawfully possessing narcotic drugs.²

Respondent also violated Wis. Admin. Code § N 7.03(4)(a), which prohibits “misappropriating [or] obtaining . . . money or property from a patient or a patient’s family.” Respondent’s employment as a nurse gave her access to H.M.’s apartment and belongings, and through her employment she also gained knowledge of H.M.’s medical condition that resulted in a long-term hospital stay. When Respondent misappropriated the personal information from H.M.’s apartment, including his social security number, she was able to use the information to obtain money and goods via a fraudulent credit card. The credit card was in the H.M.’s name. When Respondent used the credit card for a cash advance, she obtained money from H.M. When Respondent used the fraudulent credit card to go shopping at Wal-Mart, she obtained property that she was not entitled to. As a result, Respondent violated Wis. Admin. Code § N 7.03(4)(a) by misappropriating or obtaining money or property from H.M.

Further, Respondent violated Wis. Admin. Code § N 7.03(1)(g), which prohibits “[v]iolating any term, provision, or condition of any order of the board.” The Board disciplined Respondent on June 12, 2014. The Board required Respondent to complete education within 90 days and submit payment of costs within 180 days. Respondent failed to complete the

² The Division argues that Respondent’s violation of the law with respect to bail jumping also constitutes a violation of Wis. Admin. Code § N 7.03(2) because during the arrest for bail jumping, law enforcement found unlawful narcotics. This assertion is questionable and need not be decided in light of the conclusion that felony possession of narcotics is a violation of Wis. Admin. Code § N 7.03(2).

education ordered or submit payment of costs. These failures are violations of her 2014 Board order.

Finally, Respondent violated Wis. Admin. Code § N 7.03(8)(e), which prohibits “[o]btaining, possessing or attempting to obtain or possess a drug without lawful authority.” On January 4, 2015, Respondent was arrested for bail jumping. During her arrest, police found hydrocodone, lorazepam and a tablet of morphine. Respondent admitted she did not have a prescription for morphine. Respondent also failed to provide a prescription for hydrocodone or lorazepam. On October 29, 2015, Respondent pled guilty to felony possession of narcotic drugs and a judgment of conviction was entered for this offense. By unlawfully possessing at least one controlled substance, Respondent violated Wis. Admin. Code § N 7.03(8)(e).

Discipline

As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (d). In addition, Wis. Stat. § 441.50(3)(b) gives the Board the authority to revoke the privilege to practice nursing pursuant to the Nurse Licensure Compact.

The three purposes of discipline are “(1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct.” *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division requests that Respondent’s right to license renewal and her privilege to practice nursing in Wisconsin pursuant to the Nurse Licensure Compact be revoked. This discipline is appropriate given the facts at hand and the criteria set forth in *Aldrich*.

Respondent was disciplined by the Board in 2014 and was ordered to complete education and pay costs. Respondent did neither. Education is a tool the Board uses to promote rehabilitation of licensees. Respondent’s failure to comply with the educational requirements or pay the required costs shows her unwillingness to cooperate with the Board or engage in any form of rehabilitation.

Moreover, Respondent’s conduct is so egregious that there is no manner of rehabilitation or license limitations that will adequately protect the public. Respondent has shown through her conduct that she cannot be trusted with patients’ belongings or valuables. Respondent also took personal information about a patient and used it to obtain items of value (money from a cash advance on a fraudulent credit card and goods from a store that were purchased on the fraudulent credit card). In most, if not all, work sites, Respondent would have access to personal information via computers or charting systems. Respondent would also have access to patients’ personal belongings when, for example, patients are sleeping, at appointments or otherwise unable to protect their property. Notably, Respondent did all of these things to H.M. while he was hospitalized for what appears to be a serious medical problem. This demonstrates a callousness unbecoming a nurse charged with helping those in need of medical care.

Respondent has also shown that she obtains controlled substances without lawful authority. While working as a nurse, Respondent has the opportunity to unlawfully obtain drugs. Because Respondent did not participate in these proceedings, it is not known how Respondent obtained the narcotics found in her possession during her arrest. Thus, there is the possibility

that she took them from her place of nursing employment. Even if Respondent did not obtain the narcotics from nursing employment, subsequent nursing employment would give her the opportunity to obtain additional narcotics.

Respondent has shown a blatant disregard for the laws and rules governing her profession by failing to comply with the prior Board order, failing to participate in these proceedings, and failing to comply with the law. Even after being disciplined by the Board and convicted of crimes in circuit court, Respondent continued to engage in unlawful conduct, as evidenced by her most recent convictions for unlawful possession of narcotics and bail jumping. The Board has no reason to believe that Respondent is safe to practice or that she would respond to any efforts to rehabilitate her. Patients are vulnerable when they are in need of care and Respondent has a criminal history of preying on this vulnerable population.

Revocation is also necessary to deter other licensees from similar conduct. Licensees need to be placed on notice that the Board will not tolerate exploiting vulnerable patients, failing to comply with Board orders, and repeatedly violating work-related laws; and that such conduct will result in license revocation.

Finally, revocation under these circumstances is consistent with prior Board Orders. *See e.g., In the Matter of the Disciplinary Proceedings Against Cynthia M. Trotter, R.N.*, LS0910021NUR (Dec. 3, 2009) (Board revoked nurse's license where nurse arrested in Texas with medications, including morphine, found in her possession and without a prescription or permission to take them from her workplace, nurse convicted of disorderly conduct and possession of drug paraphernalia, and Texas Board revoked her license); *In the Matter of Disciplinary Proceedings Against Kathleen M. Turner, L.P.N.*, 0003277 (June 12, 2014) (Board revoked nurse's right to renew her expired and suspended license where nurse convicted of theft of movable property for using her boyfriend's prescription pad to fraudulently obtain Vicodin).

Based on the foregoing, the revocation sought by the Division is appropriate.

Costs

The Board has authority to assess costs pursuant to Wis. Stat. § 440.22(2). 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 (Aug. 14, 2008).

In this case, the Division has proven all counts alleged. The factual allegations were deemed admitted and there is no argument that the Division litigated any counts unnecessarily. Respondent's misconduct is serious in nature and the Division is seeking the most serious discipline allowable -- revocation of Respondent's right to license renewal and her right to practice nursing pursuant to the Nurse Licensure Compact. In addition, Respondent has failed to cooperate in any way with the disciplinary process and was previously disciplined by the Board.

Finally, it would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Therefore, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings.

ORDER

For the reasons set forth above, IT IS ORDERED that Respondent's right to renew her expired practical nursing license (license number 313284-31) and her privilege to practice nursing in Wisconsin pursuant to the Nurse Licensure Compact are REVOKED as follows:

- a. Respondent is on notice that she may not engaged in the practice of nursing in the State of Wisconsin.
- b. This revocation constitutes Respondent's permanent relinquishment of her license to practice nursing in the State of Wisconsin.
- c. Respondent shall immediately return all indicia of Wisconsin licensure to the Department Monitor at the address below:

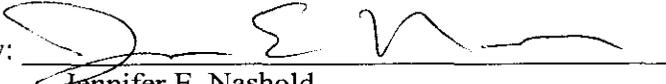
Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

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 the address set forth in the paragraph above.

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

Dated at Madison, Wisconsin on February 9, 2016.

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