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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DESMOND G. WOZNIAK, LPN,
RESPONDENT.

FINAL DECISION AND ORDER
LS0001261NUR

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, makes 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 Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

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 this 7th day of July, 2000

Ann Brewer, R.N.

A Member of the Board

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

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

**DESMOND G. WOZNIAK, L.P.N.,
RESPONDENT.**

**PROPOSED DECISION
Case No. LS-0001261-NUR**

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

*Desmond G. Wozniak
2076 South 83rd Street, #22
West Allis, Wisconsin 53219*

*Desmond G. Wozniak
2783 South Seymour Place*

Milwaukee, Wisconsin 53227

Board of Nursing
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708-8935

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on January 27, 2000. A hearing was held on March 21, 2000. Atty. Steven M. Gloe appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Mr. Wozniak did not file an Answer to the Complaint and did not appear at the hearing held in this matter.

Based upon the record herein, the Administrative Law Judge recommends that the Board of Nursing adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The respondent, Desmond G. Wozniak (d.o.b. 09/26/54) is duly licensed in the state of Wisconsin to practice as a licensed practical nurse (license #34577). Respondent's license was first granted on February 16, 1998.
2. Respondent's latest address on file with the Department of Regulation and Licensing is 2076 South 83rd Street, #22, West Allis, Wisconsin 53219.
3. Respondent's latest address known to the Division of Enforcement is 2783 South Seymour Place, Milwaukee, Wisconsin 53227.
4. On February 22, 1999, respondent was employed as a licensed practical nurse at West Allis Care Center, 6700 West Beloit Road, West Allis, Wisconsin 53219.
5. On February 22, 1999, Dr. Ashok Choithani instructed Mr. Wozniak to collect a urine sample from resident AR, an elderly female resident diagnosed with dementia. Resident AR did not speak English.
6. When Mr. Wozniak began catheterization of AR, she became resistive and combative. Resident AR grabbed Mr. Wozniak's left arm and scratched his skin with her fingernails. Mr. Wozniak reacted by slapping the resident on her cheek with his left hand.
7. At some point in time on February 22, 1999, the staff at West Allis Care Center contacted the West Allis Police Department regarding the incident. Mr. Wozniak admitted to Officer Brian Havican that he struck resident AR on the cheek with his left hand in an attempt to stop her from scratching his arm. In his Incident/Offense Report, Officer Havican stated that when he observed Mr. Wozniak's left arm, near his elbow area, he observed 3 or 4 marks that appeared to be scratches caused by fingernails. One mark appeared to be approximately 3 inches long, and there was also what appeared to be a scrape where skin had been pulled from Mr. Wozniak's arm. In the case disposition section of the Report, Captain Polaski indicated that there was insufficient evidence to refer the matter to the District Attorney's Office.
8. Respondent did not file an Answer to the Complaint filed in this matter and did not appear at the hearing held in this matter.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to s. 441.07 (1), Stats., and ch. N 7, Wis. Adm. Code.
2. By engaging in conduct as described in Findings of Fact 6 herein, respondent violated s. 441.07 (1) (c) and (d), Stats.; N 7.03 (1) and s. N 7.04 (4) and (15), Code.
3. By failing to file an Answer to the Complaint and failing to appear at the hearing held in this matter, respondent is in default under s. RL 2.14 Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Desmond G. Wozniak be, and hereby is, SUSPENDED for an INDEFINITE PERIOD of time.

IT IS FURTHER ORDERED that:

(1) Petition for Stay. Mr. Wozniak may petition the Board at any time for a stay of the suspension of his license. In conjunction with such petition, Mr. Wozniak shall submit

documentation of an evaluation performed by a health care provider acceptable to the Board of his psychological status in reference to his skills and ability to manage stress and anger and his ability to handle difficult patients. The assessor shall submit a written report of her findings directly to the Board, including: 1) a diagnosis of Mr. Wozniak's condition; 2) recommendations (if any) for treatment; 3) an evaluation of Mr. Wozniak's level of cooperation in the assessment process; 4) work restriction recommendations, and

5) Mr. Wozniak's prognosis. The report shall include a certification stating that Mr. Wozniak is fit to safely and competently return to the active practice of nursing. The assessment shall occur within (30) days prior to the date of its submission and reflect the fact that the person (s) performing the assessment received a copy of this Order.

(2) Board Action. Upon its determination that Mr. Wozniak can safely and competently return to the active practice of nursing, the Board may stay the suspension for a period of three (3) months, conditioned upon compliance with the conditions and limitations set forth in paragraph (3).

(a) Respondent may apply for consecutive three (3) months extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed upon respondent's practice during the prior three (3) month period.

(b) Upon a showing by respondent of complete, successful and continuous compliance for a period of two (2) years with the terms of paragraph (3), below, the

Board may grant a petition by respondent for return of full licensure if it determines that respondent may safely and competently engage in practice as a licensed practical nurse.

(3) Conditions of Stay

(a) If the assessment report referred to in paragraph (1) above recommends continued therapy, respondent shall maintain successful participation in a program of treatment at a health care facility acceptable to the Board. As part of treatment, respondent must attend therapy on a schedule as recommended by his therapist; the Board may, however, in its discretion establish a minimum number of therapy sessions per month.

(b) If continued therapy is required under the stay Order, respondent shall arrange for submission of quarterly reports to the Board from his therapist evaluating his attendance and progress in therapy. If the assessor

recommends work restrictions, respondent shall comply with all restrictions, as recommended.

(c) Respondent shall provide the Board with current releases complying with state and federal laws, authorizing release and access to the records of the health care provider(s)

performing his assessment.

(d) Respondent shall be responsible for all costs associated with the assessment

referred to in paragraph (1) above, and for all treatment, education and reporting required under the terms of the stay Order.

(e) Within six (6) months of the date of the initial Board Order granting stay of

suspension, respondent shall certify to the Board the successful completion of an approved course of education relating to stress and anger management and techniques relating to handling difficult patients. Respondent shall submit course outlines for approval by a Board designee within 45 days of the date of the stay Order. The course outlines shall include the name of the institution providing the instruction, the name of the instructor, and the course content.

(f) Respondent shall provide all current and prospective nursing employers with a

copy of this Final Decision and Order and any subsequent stay Orders; arrange for submission of quarterly reports to the Board of Nursing from his nursing employer (s) reporting the terms and conditions of his employment and evaluating his work performance, and report to the Board any change in his employment status within five (5) days of such change.

(4) Petition for Modification of Terms: Respondent may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the above conditions. Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats.,

s. 227.01 (3) and 227.42.

(5) Motion for Default: The Complainant's motion for default is granted.

(6) Costs: Pursuant to s. 440.22 Wis. Stats., the cost of this proceeding shall be assessed against respondent, and shall be payable to the Department of Regulation and Licensing.

This order is effective on the date on which it is signed by a representative of the Board of Nursing.

OPINION

The Division of Enforcement alleges in its Complaint that Mr. Wozniak's conduct, as described therein, constitutes a violation of s. 441.07 (1) (c) and (d), Stats.; N 7.03 (1) and s. N 7.04 (4) and (15), Code.

I. Violations

The evidence presented establishes that Mr. Wozniak violated numerous laws relating to the practice of a licensed practical nurse.

First, by failing to file an Answer to the Complaint and failing to appear at the hearing held in this matter, Mr. Wozniak is in default under s. RL 2.14, Code. Therefore, the Board of Nursing may make findings and enter an order on the basis of the Complaint and other evidence.

Second, based upon an interview of Mr. Wozniak that is summarized in the Incident/Offense Report prepared by Officer Brian Havican of the West Allis Police Department, Mr. Wozniak admitted that he struck the resident. Mr. Wozniak said that Dr. Ashok Choithani instructed him to collect a urine sample from the resident. He said that he was attempting to put a catheter in the patient to obtain a urine sample when she suddenly grabbed his left arm near his elbow and scratched his skin with her fingernails. Mr. Wozniak said that the pain from the scratching surprised him and that the pain was intense. He said that he reacted by swinging his left arm towards the resident to attempt to stop her from scratching his arm. He said that the back of his left fingers struck the resident in the area of her left cheek, but the contact was not hard. He said several times that he never intended to slap or strike the resident but was only trying to get his arm away from her and stop the scratching. Mr. Wozniak was cooperative during the investigation and answered all questions regarding the incident. Officer Havican indicated in his Report that when he observed Wozniak's left arm, near his elbow area, he observed 3 or 4 marks that appeared to be scratches caused by fingernails. One mark appeared to be approximately 3 inches

long, and there was also what appeared to be a scrape where skin had been pulled from his arm. According to information contained in the Report, the file was marked "Inactive" and a note was made stating that the "employee has been terminated and there is insufficient evidence/witnesses to take this matter to the DA's office for charging." *Exhibit 2, Incident/Offense Report, p. 3-4; Exhibit 4.*

Officer Havican also interviewed Rose Marie Garsha, an employee at West Allis Care Center, regarding the incident. Ms. Garsha said that she spoke with Mr. Wozniak to determine what had happened during the incident. According to Ms. Garsha, Mr. Wozniak said that he informed Dr. Choithani that resident AR had a low-grade temperature. Dr. Choithani ordered that a urine sample be completed for the resident. Mr. Wozniak went to the resident's room to obtain the sample. Mr. Wozniak was attempting to put a catheter in resident AR when she suddenly grabbed his left arm and scratched his skin with her fingernails. Mr. Wozniak attempted to push her arm away in an effort to get her to stop the scratching. Mr. Wozniak struck the resident in the left cheek area of her face with his fingers. Dr. Choithani witnessed the incident. Ms. Garsha also report that resident AR suffers from Dementia, and does not speak any English (only Italian). Ms. Garsha said that it would be difficult for resident AR to communicate or remember the incident. *Exhibits 2, 3, 4, and 5.*

In addition, Officer Havican interviewed Dr. Choithani regarding the incident. Dr. Choithani said that he ordered a urine sample and other tests to be collected for, resident AR, and Wozniak was to conduct the urine collection procedure. He said that he left the room for a short period of time, then returned to find out if Wozniak had completed the procedure. Dr. Choithani said that the door to the resident's room was partially open when he arrived back, and he pushed it open to enter. He observed Wozniak "slap the resident on the left cheek area of her face while she was laying in her bed". He said that the incident happened very quickly, and he could not observe Wozniak being scratched from where he was standing (in the doorway of the room). He said he observed Wozniak's left fingers slap the resident in the left cheek and that it was hard enough for him to hear it. He said that he felt an obligation to report the incident to Rose Garsha. *Exhibit 2, Incident/Offense Report, p. 2-3.*

Dr. Choithani further stated that he could not say if Wozniak's slapping the resident in the face was intentional or by accident. He said that he did not see Wozniak draw his arm back or raise his arm up prior to slapping the resident. He also said that it was possible the motion of Wozniak's arm and slapping of the patient on the cheek could have been a reaction to his being scratched by the resident's fingernails. It was Dr. Choithani's opinion that the resident would not be able to communicate what happened during the incident. He said that the resident's behavior (swinging out at staff members and scratching or grabbing someone) was consistent with someone suffering from Dementia. He did not believe that the patient intentionally scratched Wozniak during the incident. *Exhibit 2, Incident/Offense Report, p. 2-3.*

Finally, based upon the *Report of Alleged Client Abuse, Neglect or Misappropriation* prepared by the staff at the West Allis Care Center, Mr. Wozniak admitted that he struck resident AR. When Mr. Wozniak began catheterization of AR, she became combative and resistive, then scratched Mr. Wozniak on his arm. Mr. Wozniak then hit back, striking the resident on the left side of the face. According to the information contained in the report, Mr. Wozniak said, "he struck out at resident's arms to prevent further injury, accidentally struck face lightly". *Ex. 1, p. 4.*

II. Discipline

The evidence presented in this case establishes that the Mr. Wozniak violated s. 441.07 (1) (c) and (d), Stats.; N 7.03 (1) and s. N 7.04 (4) and (15), Code. Having found that Mr. Wozniak violated laws governing the practice of a licensed practical nurse in Wisconsin, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Board of Nursing is authorized under s. 441.07 (1), Stats., to reprimand a licensed practical nurse or limit, suspend or revoke the license of a licensed practical nurse if it finds that the individual has violated ch. 441, Stats., or any rule adopted by the Board under the statutes.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1969).

The Complainant recommends that Mr. Wozniak's license be suspended until he can demonstrate rehabilitation and that he be required to complete training in stress and anger management and techniques for handling difficult patients.

The Administrative Law Judge recommends that Mr. Wozniak's license to practice as a licensed practical nurse be suspended for an indefinite period of time and that he be required to complete appropriate training. This measure is designed primarily to assure protection of the public.

Based upon the evidence presented, Mr. Wozniak is not capable of practicing as a licensed practical nurse in a manner that safeguards the interests of the public. Upon receipt of a petition for a stay of the order of suspension and documentation of fitness to safely and competently resume practice as a licensed practical nurse, it is recommended that Mr. Wozniak be permitted to return to active practice subject to compliance with certain conditions as set forth in the proposed Order. The requirement that he complete appropriate training prior to being allowed to return to full licensure is designed to provide an additional measure of protection to the public.

Based upon the record herein, the Administrative Law Judge recommends that the Board of Nursing adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 5th day of June, 2000

Respectfully submitted,

Ruby Jefferson-Moore

Administrative Law Judge