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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

-IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

COSETTE S. GAGNER, R.N.,
RESPONDENT.

Case No. LS0003037NUR

FINAL DECISION AND ORDER

The parties to this action for the purposes of § 227.53, Stats., are:

*Cosette S. Gagner, R.N.
106 Ziegler Ct.
Cross Plains, WI 53528*

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

*Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935*

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board of Nursing. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Cosette S. Gagner, R.N., Respondent, date of birth May 30, 1964, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin, pursuant to license number 11309, which was first granted September 24, 1993.
2. Respondent's last address reported to the Department of Regulation and Licensing is 106 Ziegler Ct., Cross Plains, Wisconsin 53528.
3. Respondent was employed as a registered nurse by the Wisconsin Department of Health and Family Services, Division of Care and Treatment Facilities, at Mendota Mental Health Institute (Mendota) in Madison Wisconsin, where she provided psychiatric nursing services to patients, from November 29, 1993 until she resigned July 30, 1999.

COUNT I (Violation of Related Law)

4. On August 25, 1987, Respondent was convicted of Felony Theft in Ozaukee County case number 87 CF 60 for having stolen a necklace valued at \$2000 from a family for whom she babysat. She was sentenced to 3 years probation and ordered to pay restitution.
5. On January 11, 1993, Respondent was granted a full pardon for the August, 25, 1987, felony theft conviction. Although the pardon restored some rights to Respondent, it did not expunge or void the conviction.

6. On December 3, 1998, as part of her employment requirements at Mendota, Respondent filled out a Background Information Disclosure Form, which was required under the provisions of §§ 48.685 and 50.065 of the Wisconsin Statutes. In completing the form, Respondent:

- a. Checked "no" in response to question 1 in section A, which asks ". . . were you ever convicted of any crime or offense anywhere, including in federal, state, local and tribal courts, for any act or offense listed below?" Among the crimes listed below are "property crimes".
- b. Checked "no" in response to question 1 in Section B, which asks "Other than the offenses listed above, . . . were you ever convicted of any crime or offense anywhere, including in federal, state, local and tribal courts?"
- c. Checked "no" in response to question 5 In Section B, which asks "Has any agency ever found that you misappropriated (improperly took / used) the property of a person or client?"
- d. Signed her name under the paragraph that states "I understand, under penalty of law, that the information provided above is truthful and accurate to the best of my knowledge and that knowingly and intentionally providing false information or omitting information may result in a forfeiture of up to \$1000 and other sanctions as provided in HFS 12.20 (1) (c), Wis. Adm. Code.

7. At the time Respondent completed the form, she knew that she had been convicted of a crime which should have been reported on the form.

8. By providing false information and failing to report information on the form Respondent violated HFS § 12.20(1)(c), Wis. Adm. Code and was subject to forfeitures and additional sanctions.

9. HFS § 12.20(1)(c), Wis. Adm. Code is a law substantially related to the practice of nursing.

COUNT II (Conduct Below Minimal Standards)

10. On September 13, 1998, Respondent transferred to the Treatment and Rehabilitation Unit (TRU) in Goodland Hall at Mendota, which is a medium security forensic unit. The patients on that unit are males who are sex offenders or diagnosed with Axis II personality disorders who have been convicted of crimes or found not guilty by reason of mental disease or mental defect.

11. At the time of Respondent's transfer, Mr. A was an inpatient on TRU. Mr. A, who was then 23 years of age, is serving 5 consecutive life terms based on being found not guilty by reason of mental disease or mental defect of murdering his parents and siblings when he was in his mid-teens.

12. Respondent and Mr. A had never met prior to September of 1998. Respondent , provided psychiatric nursing services to Mr. A from September 13, 1998 to the time of her resignation.

13. Beginning in the fall of 1998, Respondent began providing Mr. A with preferential treatment not provided to other patients on the unit. This continued until Respondent's resignation and , included:

- a. Respondent gave Mr. A 34 undated greeting cards professing her feelings of love for Mr. A and stating her desire to have sex with him.
- b. Respondent gave Mr. A many photographs, including:
 - Forty photographs of Respondent and Respondent's friends, pets, and family members. In four photographs Respondent is nude from the waist down.
 - Several photographs taken in the "leisure room", on the lower level in Goodland Hall at Mendota, with Respondent's camera in violation of unit rules. In four of those photographs Respondent and Mr. A are hugging very closely, and in one of the photographs they are laying down together on the floor.
- o c. Mr. A's computer, which was kept in his room on the unit, contained on its hard drive a series of poems written by Respondent, in which she identified herself as "Cozy RN". These poems were romantic and erotic in nature.
- d. Respondent gave Mr. A 19 "home" videotapes, which among other things included footage of:
 - Respondent partially and totally nude.
 - Respondent making sexually provocative statements.
 - Respondent engaging in sexually provocative acts.
 - Respondent making various statements referencing illegal use of drugs.
 - Respondent using illegal drugs.
 - A female friend of Respondent nude from the waist down.
 - Respondent's children in private moments.

e. When Respondent was assigned to work on other units at Mendota, Respondent often called Mr. A on the patient phone on the TRU unit.

f. Respondent spent excessive time with Mr. A in the day rooms, the doorway to his bedroom, in his bedroom and using the computer in the unit's medication room. Respondent often spent more than an hour to an hour and one half per shift talking with Mr. A, which was not part of Mr. A's treatment. On at least one shift, Respondent spent 6 of the 8 hours with Mr. A.

g. On June 29, 1999, when the unit manager left leaving Respondent in charge of the unit, another patient shouted "Its party time." Respondent went into a dayroom on the unit and worked puzzles with Mr. A and other patients. The group became so loud the noise carried beyond the fire doors and security and staff from another unit checked on the TRU.

14. Other patients and staff on the unit became aware of the large amount of time Respondent spent with Mr. A. Based on what they observed on the unit, the patients and staff believed that Respondent was having a sexual relationship with Mr. A. This was disruptive to treatment on the unit.

15. On June 20, 1999 the unit had a Father's Day picnic for the patients, which was held in a secure outdoor location adjacent to Goodland Hall. During the picnic:

a. Respondent provided approximately 8 ounces of vodka to Mr. A, which was against unit rules.

b. Respondent escorted Mr. A back to the unit and the two of them went into the medication room and closed and locked the door. While Respondent and Mr. A were in the medication room, Respondent and Mr. A had sexual contact.

16. On July 3, 1999:

a. Respondent was at work dressed in an inappropriately revealing manner. Respondent reached under her dress, took off her panties, and gave them to Mr. A.

b. Respondent violated Security Policy by being out of the locked nursing station when alone on the unit.

c. Between 5:30 and 5:40 PM, Respondent went left the unit and went down to the leisure room with Mr. A and Mr. B to get tables for a picnic. Respondent did not take a communication radio, notify security, "sweep" the leisure room first, or turn on the audio monitor, which would have enabled staff elsewhere in the unit to hear what was happening in the leisure room. All of these steps are safety precautions required by Security Policy.

d. Respondent was gone from the unit longer than had been anticipated and another staff member turned on the monitor. It was so quiet he became concerned and called the leisure room number. Respondent answered the phone and the staff was then able to hear noise.

e. While in the leisure room, with Mr. B present, Respondent and Mr. A had sexual intercourse.

17. On Friday, July 9:

a. Respondent used profane language in the nursing station during a phone conversation relating to a memo she received from the personnel director notifying her that she had not correctly completed the Background Check Form, referenced in Count I, above. The conversation was loud enough for patients and staff to hear.

b. Respondent asked Mr. A to assist her with a "legal" response to the memo and provided Mr. A with her personnel and personal documents as well as the unit's personnel policy book.

18. On July 11, 1999, Respondent worked extra time on AFTU, a different unit with adolescent patients. Respondent informed the patients on AFTU that she was married but cheated and had a boyfriend.

19. On July 12, 1999, Respondent spent approximately 6 hours of the time between 3:30 and 10:00PM with Mr. A in the medication room on the computer, in the patio garden, and watching a movie in the large dayroom with the lights off and a blanket over their legs. At that time Respondent was the charge nurse in charge of the unit and should have been in the locked nurses station as required by Security Policy.

20. On one occasion in June or July, 1999, Mr. B saw Respondent come out of Mr. A's room and observed Respondent and Mr. A "French kissing with their tongues" in Mr. A's room. Mr. B heard Respondent telling Mr. A that she loved him.

21. On July 14, 1999, Mendota officials became aware of some of Respondent's alleged misconduct and placed

Respondent on administrative leave while they conducted an investigation. Respondent was directed not to have any contact of any kind with any Mendota patient while on leave.

22. On July 16, 1999, two days after being placed on administrative leave by the Mendota officials, Respondent contacted a psychologist and psychiatrist who had last treated her 17 months earlier. Respondent was upset and reported that she had been accused of having an inappropriate relationship with a patient.

23. Respondent and Mr. A had been communicating through e-mail. Mr. A's computer was seized by Mendota officials as part of the investigation.

24. Some time before July 23, 1999, Respondent rented a post office box for the purpose of receiving correspondence from Mr. A.

25. On July 23, 1999 Mr. A sent a letter to that post office box addressed to "Jessica Rabbit".

26. On July 27, 1999, Respondent was hospitalized on Meriter Psychiatric Unit in Madison because of increasing suicide ideation with a vague plan. While hospitalized, a substance abuse assessment recommended inpatient treatment and Respondent was transferred to that service.

27. Respondent was discharged from inpatient hospitalization on August 9, 1999 and since that time has reported to the psychologist and psychiatrist that "she has been free of drugs and alcohol and that her mood has been overall pretty stable."

28. On August 12, 13, and 16, 1999 letters were mailed from the TRU unit addressed to Jessica Rabbit at the post office box. The envelopes were in the handwriting of Mr. C, another patient, and had Mr. C's return address. The envelopes contained letters written by Mr. A to Respondent. Mr. C wrote the envelopes at Mr. A's request.

29. On August 16 Mr. C received three letters purportedly from "Jessica Rabbit", which were actually letters Respondent wrote to be given to Mr. A. The letters included Respondent's statements of love for Mr. A, and a discussion about divorcing her husband and marrying Mr. A.

30. On August 18, Mr. C received another such letter from Respondent to Mr. A, which included the following:

"Tell me again exactly how much I should or should (sic) do with this game thing. I will do what you tell me to do but I don't want any more legal shit. I can't handle it and we don't need it either. Start harassing the MMHI people they are treating you so unjust-Fight them-You did nothing wrong why are you being humiliated and punished? Make them pay."

31. After Respondent was discharged from inpatient status, she mailed a letter to Mr. A written to him by Respondent's 11-year-old daughter.

32. After Respondent was discharged from inpatient status, she sent a letter addressed to Mr. C, which was intended for Mr. A, which included a list of staff members at Mendota, who Respondent contends are involved with illegal drugs. The document also includes other violations of policies and procedures which Respondent contends were occurring at Mendota.

33. On August 19, 1999, Respondent called Perry Sims, Administrative Captain at Mendota, and offered to provide Mr. Sims with information regarding illegal drug use by staff while on duty at Mendota, if Respondent could have visitation and phone privileges with Mr. A.

34. Respondent's conduct described in findings of fact 13 through 20, 23 through 25, and 28 through 33 falls below the minimum standards of the nursing profession necessary for the protection of the health, safety, or welfare of the patient and public.

COUNT III (Sexual Contact)

35. As stated above, in finding of fact 15, on June 20, 1999, Respondent and Mr. A had sexual contact, in the unit's medication room.

36. As stated above, in finding of fact 16, on July 3, 1999, while in the leisure room, Respondent and Mr. A had sexual intercourse.

37. On other occasions in various locations on the unit, Respondent and Mr. A had sexual contact.

COUNT IV (Violation of Related Law)

38. Mendota is a facility defined under § 940.295(2)(k), Stats., and Respondent was an employee of that facility.
39. § 940.225(2)(g), Stats., defines second degree sexual assault, a class BC felony, to include an employee of a facility defined under § 940.295(2)(k), Stats. who has sexual contact or sexual intercourse with a person who was a patient of the facility.
40. § 940.225(2)(g), Stats., is a law substantially related to the practice of nursing.
41. On February 7, 2000, Respondent was charged in Dane County Wisconsin Circuit Court case number 00CF000234, with two counts of violating § 940.225(2)(g), Stats., Second Degree Sexual Assault of Patient. The criminal charges, which are based upon the same facts as set out above, are unresolved at this time.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to § 441.07(1), Stats.
2. The Wisconsin Board of Nursing has authority to enter into this stipulated resolution of this matter pursuant to § 227.44(5), Stats.
3. Respondent's conduct, as set out in Count I above, is the violation of a law substantially related to the practice of professional or practical nursing, which is misconduct and unprofessional conduct as defined by N § 7.04(1), Wis. Adm. Code, and subjects Respondent to discipline pursuant to § 441.07(1)(d), Stats.
4. Respondent's conduct, as set out in Count II, is the violation of the minimum standards of the nursing profession necessary for the protection of the health, safety, or welfare of the patient and public, which is misconduct and unprofessional conduct as defined by N § 7.04(into.), Wis. Adm. Code, and subjects Respondent to discipline pursuant to § 441.07(1)(d), Stats.
5. Respondent's conduct, as set out in Count III, is engaging in inappropriate sexual contact, exposure, gratification, and other sexual behavior with a patient, which is misconduct and unprofessional conduct as defined by N § 7.04(11), Wis. Adm. Code, and subjects Respondent to discipline pursuant to § 441.07(1)(d), Stats.
6. Respondent's conduct, as set out in Count IV above, is the violation of a law substantially related to the practice of professional or practical nursing, which is misconduct and unprofessional conduct as defined by N § 7.04(1), Wis. Adm. Code, and subjects Respondent to discipline pursuant to § 441.07(1)(d), Stats.

ORDER

1. That the license of Cosette S. Gagner, R.N. as a registered nurse in the state of Wisconsin is hereby SUSPENDED for a period of at least FIVE years, effective immediately.
2. That Respondent may petition the Board for the termination of the suspension of her registered nurse license after five years, under the following terms and conditions:
 - a. Respondent shall, at her own expense, have undergone an assessment by a mental health care provider experienced in assessing health care providers who violated professional boundaries with patients
 - b. The practitioner performing the assessment must have been approved by the Board, or its designee, with an opportunity for the Division of Enforcement to make its recommendation, prior to the evaluation being performed.
 - c. Respondent must provide proof sufficient to the Board that Respondent can practice with reasonable skill and safety of patients and public.
 - d. If the Board determines to end the suspension, Respondent's license shall be limited in a manner to address any recommendations resulting from the assessment, including, but not limited to:
 - i. Psychotherapy, at Respondent's expense, by a therapist approved by the Board, to address specific treatment goals, with periodic reports to the Board by the therapist.
 - ii. Additional professional education in any identified areas of deficiency.
 - iii. Restrictions on the nature of practice or practice setting or requirements for

supervision of practice, by a professional approved by the Board, with periodic reports to the Board by the supervisor.

3. Requests for approval of the evaluating mental health care provider and the results of the evaluation shall be mailed faxed or delivered to:

Department Monitor

Department of Regulation and Licensing

Division of Enforcement

1400 East Washington Ave.

P.O. Box 8935

Madison, WI 53708-8935

Fax (608) 266-2264

4. Respondent shall bear all costs incurred as a result of satisfying this Order.

5. Respondent shall appear before the Board on an annual basis, if requested by the Board, to review the progress of any treatment and rehabilitation.

6. Respondent's alleged conduct, which is the basis for the criminal charges against Respondent in Dane County Wisconsin Circuit Court case number 00CF000234, has been considered in the discipline ordered in this matter. The resolution of those criminal charges, whatever it may be, shall not be the basis for either the imposition of any additional discipline or the modification of the discipline ordered herein.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated this 3rd day of March, 2000.

Ann Brewer, R.N.

Chairperson

Board of Nursing