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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY

PROCEEDINGS AGAINST:

BETH CONANT,
RESPONDENT

FINAL DECISION AND ORDER
LS0105111NUR

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 6th day of December, 2001.

Ann Brewer, RN

A Member of the Board

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

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

**BETH A. CONANT, R.N.,
RESPONDENT**

**PROPOSED DECISION
LS0105111NUR**

PARTIES

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

Beth A. Conant

1694 Hazelwood Drive

Sobieski, WI 54171

Board of Nursing

P.O. Box 8935

Madison, WI 53708-8935

Department of Regulation & Licensing

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on May 17, 2001. A hearing was held on August 14, 2001. The hearing transcript was filed on September 17, 2001. Atty. James W. Harris appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Atty. Michael J. Fitzgerald, Glynn, Fitzgerald & Albee, S.C., appeared on behalf of the respondent, Beth A. Conant.

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, Beth A. Conant (d.o.b. 01/20/60) is duly licensed in the state of Wisconsin to practice as a registered nurse (license #110933). Respondent's license was first granted on September 11, 1992.
2. Respondent's latest address on file with the Department of Regulation and Licensing is 1694 Hazelwood Drive, Sobieski, WI 54171.
3. Ms. Conant has been addicted to Vicodin, a hydrocodone-based product, since 1997 or 1998. Vicodin is a commonly prescribed painkiller. She first began taking a hydrocodone-based product when she was given a prescription for it following surgery. The next time she started taking it was when she had a pituitary tumor sometime between 1995 and 1997. She was given a prescription for Lorcet. The impact, pain-wise or symptom-wise, from the tumor on her physically was excruciating meningeal-type pain. She was, in fact, diagnosed as having meningitis. She also had severe Migraine headaches. She was prescribed a hydrocodone-based painkiller concurrent with that diagnosis. In addition to obtaining hydrocodone-based products legitimately from her health care providers, she also obtained them illegally from her husband, who is a physician, and from some of their physician friends. Because of her addiction, she is unable to function unless she has a certain amount of hydrocodone. Without hydrocodone, physically she "would get very ill, achy".
4. On August 3, 1999, a federal grand jury charged Beth Conant and her husband, Scott Conant, with obtaining hydrocodone-based drugs by misrepresentation, fraud, forgery, deception and subterfuge. Beth Conant was named only in Counts 8 and 9 of the Indictment. Count 9 was dismissed. Ms. Conant pled guilty to Count 8, which alleges that:

On or about between February 10, 1998 and January 26, 1999, in the State and Eastern District of Wisconsin,

SCOTT CONANT and ELIZABETH CONANT, a/k/a BETH LIBERTY, a/k/a BETH POTTER,

the defendants herein knowingly and intentionally obtained approximately 1, 580 dosage units of Schedule III controlled substances, to wit: generic and brand-name hydrocodone-based drugs, by misrepresentation, fraud, forgery, deception and subterfuge through approximately 36 prescriptions issued in the names of Scott Conant, Beth Conant, Beth Liberty, and Shaun Potter, bearing the DEA Registration number and forged signature of Dr. James Thill, presented to pharmacies in Green Bay, Wisconsin;

All in violation of Title 21, U.S.C., s. 843 (a) (3) and Title 18 U.S.C. s. 2.

5. As a result of Beth Conant's guilty plea, she was convicted on February 9, 2001, in the United States District Court for the Eastern District of Wisconsin, of one count of obtaining hydrocodone-based drugs by misrepresentation, fraud, forgery, deception and subterfuge, in violation of 21 U.S.C. sec. 843 (a) (3) and 18 U.S.C. sec. 2.

6. As a result of Beth Conant's conviction, as described in paragraph 4 above, she was placed on probation for a period of one year commencing on February 8, 2001. The conditions of respondent's probation include, but are not limited to, the following:

4. The defendant is to participate in a program of testing and residential or outpatient treatment for drug and alcohol abuse, as directed by her supervising probation officer, until such time as she is released from such program. The defendant shall pay the nominal cost of this program as directed by her supervising probation officer. The defendant is to refrain from use of all alcoholic beverages throughout the period of her supervised release term.

7. The defendant shall participate in a mental health treatment program and shall take any and all prescribed medications as directed by the treatment provider and participate in any psychological/psychiatric evaluation and counseling as directed by her supervising probation officer. The defendant shall pay the costs of such treatment as directed by her supervising probation officer.

7. Ms. Conant was admitted to Sierra Tucson, a treatment center located in Arizona, on July 21, 2000 and discharged on August 19, 2000 after successfully completing treatment for drug dependency issues. After she was discharged from Sierra Tucson, Ms. Conant attended a 16-week aftercare program at Bellin Psychiatric Center in Green Bay. During the past three years, she has seen her psychiatrist, who is also her "addictologist", monthly or every other month. She continues to see her AODA counselor.

8. Ms. Conant suffers from recurrent depression for which she sees a psychiatrist on an on-going basis. She has been taking medication for her depression for at least the last four years.

9. The last time Ms. Conant worked as a nurse was in May 1996.

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 4 and 5 herein, respondent violated s. 441.07 (1) (b) and (d), Stats.

3. By engaging in conduct, as described in Findings of Fact 4 and 5 herein, respondent violated s. N 7.04 (1), (2) and (15), Code.

4. By engaging in conduct, as described in Findings of Fact 3, 4 and 5 herein, respondent violated s. 441.07 (1) (c), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license (#110933) of Beth A. Conant to practice as a registered nurse be, and hereby is, **SUSPENDED** for an indefinite period of time.

IT IS FURTHER ORDERED that:

(1) Petition for Stay. Ms. Conant may petition the Board at any time for a stay of the suspension of her license. In conjunction with such petition, Ms. Conant shall submit documentation of an evaluation performed by one or more health care providers acceptable to the Board of her current use and/or dependence on controlled substances and her current mental health status. The assessor (s) shall submit a written report of his/her/their findings directly to the Board, including: 1) findings regarding diagnoses; 2) recommendations (if any) for treatment; 3) an evaluation of Ms. Conant's level of cooperation in the assessment process; 4) work restriction recommendations, and 5) Ms. Conant's prognosis. The report shall include a certification stating that Ms. Conant is fit to safely and competently return to the active practice of nursing. The assessment shall occur within thirty (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 Ms. Conant 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 five (5) 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 practice as a registered 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 shall attend therapy on a schedule as recommended by her therapist (s); 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 her therapist (s) evaluating her attendance and progress in therapy. If the assessment recommends work restrictions, respondent shall comply with all restrictions 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 her assessment and, if applicable, those providing treatment to her.

(d) Within six (6) months of the date of the initial Board Order granting stay of suspension, respondent shall certify to the Board of Nursing the successful completion of an approved refresher-nursing course. Respondent shall submit a course outline for approval by a Board designee within two (2) months of the date of the stay Order. The course outline shall include the name of the institution providing the instruction, the name of the instructor, and the course content.

(e) Respondent shall not engage in medication administration except under the direct supervision of another registered nurse.

(f) Respondent shall attend Narcotics Anonymous meetings, or an equivalent program for recovering professionals, upon a frequency as recommended by the supervising health care provider, but not less than one meeting per week.

(g) Respondent shall provide on at least a week basis, random monitored urine specimens, as the supervising health care provider shall direct. Respondent shall arrange for her supervising health care provider to submit quarterly reports to the Board that summarizes the results of the urine screens.

(h) Respondent shall abstain from personal use of controlled substances, as defined in s. 961.01 (4), Stats., except when necessitated by a legitimate medical condition and then only with the prior approval of the supervising health care provider.

(i) 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.

(j) 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 her nursing employer (s) reporting the terms and conditions of her employment and evaluating her work performance, and report to the Board any change in her employment status within five (5) days of such change.

(k) The Board may, in its discretion, impose additional conditions and limitations on respondent's practice to ensure that she is fit to safely and competently practice as a registered nurse.

(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 to Amend Complaint: The Division of Enforcement's motion to amend the Complaint to conform to the evidence 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 a designee of the Board of Nursing signs it.

OPINION

The Division of Enforcement alleges in its Complaint that Ms. Conant's conduct, as described therein, constitutes a violation of s. 441.07 (1) (b and (d), Stats., and s. N 7.04 (1), (2) and (15), Code. In addition, during the hearing, the Division of Enforcement made a motion to amend the Complaint to conform to the testimony given by Ms. Conant relating to her abuse of hydrocodone. Specifically, the Division requested that the Complaint be amended to include a violation of N 7.03 (2), Code. The respondent did not oppose the motion and, in fact, admitted the violation; therefore, the motion is granted. *Tr. p. 71-72.* ¹

1. As reflected in Conclusions of Law 4, the Division's motion is in essence a request to amend the Complaint to include a violation of s. 441.07 (1) (c), Stats. That provision states that the Board may discipline a registered nurse if it finds that the nurse has committed "acts which show the registered nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency". Section N 7.03 (2), Code defines what constitutes "abuse of alcohol or other drugs".

I. Violations

The evidence presented in this case establishes that Ms. Conant violated numerous laws relating to the practice of professional nursing.

First, Ms. Conant admitted in her Answer to the Complaint that she was convicted of obtaining hydrocodone through fraud or misrepresentation and that such conduct constitutes a violation of s. 441.07 (1), (b) and (d), Stats., and N 7.04 (1), (2) and (15), Code.

Second, based upon the evidence contained in the record, Ms. Conant was convicted on February 9, 2001, in the United States District Court for the Eastern District of Wisconsin, of obtaining hydrocodone by misrepresentation, fraud, forgery, deception and subterfuge, in violation of 21 U.S.C. s. 843 (a) (3) and 18 U.S.C. s. 2. *Exhibits 1 and 2.*

Based upon the Indictment, in August 1999, Ms. Conant and her husband, Scott Conant, were charged by a grand jury of obtaining hydrocodone-based drugs by misrepresentation, fraud, forgery, deception and subterfuge. Beth Conant was named in Counts, 8 and 9 of the Indictment. Count 9 was dismissed. She pled guilty to Count 8, which alleges that:

On or about between February 10, 1998 and January 26, 1999, in the State and Eastern District of Wisconsin,

SCOTT CONANT and ELIZABETH CONANT, a/k/a BETH LIBERTY, a/k/a BETH POTTER,

the defendants herein knowingly and intentionally obtained approximately 1, 580 dosage units of Schedule III controlled substances, to wit: generic and brand-name hydrocodone-based drugs, by misrepresentation, fraud, forgery, deception and subterfuge through approximately 36 prescriptions issued in the names of Scott Conant, Beth Conant, Beth Liberty, and Shaun Potter, bearing the DEA Registration number and forged signature of Dr. James Thill, presented to pharmacies in Green Bay, Wisconsin ...

According to the Judgment of conviction, the conditions of Ms. Conant's probation include, but are not limited to, the following:

4. The defendant is to participate in a program of testing and residential or outpatient treatment for drug and alcohol abuse, as directed by her supervising probation officer, until such time as she is released from such program. The defendant shall pay the nominal cost of this program as directed by her supervising probation officer. The defendant is to refrain from use of all alcoholic beverages throughout the period of her supervised release term.

7. The defendant shall participate in a mental health treatment program and shall take any and all prescribed medications as directed by the treatment provider and participate in any psychological/psychiatric evaluation and counseling as directed by her supervising probation officer. The defendant shall pay the costs of such treatment as directed by her supervising probation officer.

Finally, Ms. Conant testified at the hearing that she obtained hydrocodone-based products by misrepresentation. She testified that Scott, her husband, wrote prescriptions in her son's name and she went to the pharmacy to pick up the prescriptions. She said that she misrepresented herself "by saying those were for my son, Sean, when in fact, you know, I would take some of them, Scott might take some of them, and Sean would get some of them". She further testified that she never forged a prescription and that during the time of the allegations in

the Indictment she was not working as a nurse. ²

2. Ms. Conant testified that the last time she worked as a nurse was in May of 1996.

II. Evidence Presented

(A) Testimony of Beth Conant

Ms. Conant obtained her license as a Licensed Practical Nurse in 1981 and her license as a Registered Nurse in 1991. ³

3. This proceeding does not involve Ms. Conant's Licensed Practical Nurse credential.

Ms. Conant testified that she has been addicted to Vicodin since 1997 or 1998. She first began taking a hydrocodone-based product when she was given a prescription for it following surgery. The next time she started taking it was when she had a pituitary tumor sometime between 1995 and 1997. She was given a prescription for Lorcet. She said that the impact pain-wise or symptom-wise from the tumor on her physically was excruciating meningeal-type pain and that she was actually diagnosed with meningitis from it. She said that the tumor is benign and that she is being followed yearly. She also had severe Migraine headaches. She was prescribed a hydrocodone-based painkiller concurrent with that diagnosis. ⁴

4. Vicodin is a commonly prescribed painkiller. *Tr. p. 32-33*

Ms. Conant further testified that "with the migraine headaches going on and the problems with the tumor and so on" Dr. Somerville, her neurologist, referred her to a pain clinic. He continued to provide her with monthly prescriptions for the pain medication. She said that even though she had been a nurse for quite some time, she did not realize the addictive properties of the medication. She said that she remembers saying, "you know, if I didn't have it or I hadn't taken it for a while that I would start feeling withdrawals, and I really didn't know what they were at the time. So I consulted my -- and other people. And it -- it just became a vicious cycle of needing more and more pain medication". She also said that her husband, Scott Conant, who is a physician, also prescribed the medication for her. In addition, they had some physician friends who prescribed some medication for her because she needed more and more. She said that it "just snowballed into an addiction over a couple years". She said that she would not be able to function unless she had a certain amount and that "Physically, I would get very ill, achy. Yeah. I had to -- I could not function. It was scary. I didn't know where to turn".

Ms. Conant said that her husband, Scott Conant, also developed an addiction to hydrocodone at about the same time she did. She said that "at first it wasn't Scott, you're addicted, I'm addicted, let's go get this stuff kind of thing. It's kind of when you're in addiction, if you know anything about addictions, you do crazy things. You don't -- you don't realize what you're doing. It was legal. You think you deserve it. Him being a physician had ways of getting medication. He would get samples through the mail". She said that they were not using the pills recreationally and were not selling them to anyone.

In reference to treatment, Ms. Conant testified that she has been in inpatient or outpatient in some capacity for the last year. She said that when the federal Indictment came out, that was a wake up call for her and Scott in terms of dealing with their addiction. Even before that, she had tried unsuccessfully to quit on her own. When the Indictment was issued, they immediately went into treatment. She went to the Sierra Tucson facility for inpatient treatment in July of 2000. She successfully completed a 30-day inpatient treatment program for drug dependency at the facility. Her psychiatrist, Dr. Soncrant, recommended the facility. *Tr. p. 56.*

Ms. Conant said that the Sierra Tucson program included several components and dealt with substance abuse as well as mental health and emotional issues. They had different therapists for different treatments, including licensed psychiatrists and psychologists. They had a family week where if the patient chose to, his or her family could involve themselves in the patient's treatment for about a one-week period. She said that her family, including her parents, participated in the program. It was a chance for them to express what they had done to hurt other family members. She basically sat down with the adults that participated and told her whole story from childhood on. She said that she was successfully discharged from the program. *Exhibit 3.*

Since leaving Sierra Tucson, Ms. Conant attended a 16-week aftercare program at Bellin Psychiatric Center in Green Bay. Bellin is an inpatient psychiatric center that provides outpatient therapy, intensive, and aftercare. She continues to see Ruth Meyers, who is her AODA counselor. She has also been seeing Dr. Soncrant, her "psychiatrist, addictologist", monthly or every other month for the past three years. ⁵

5. Following his treatment, Scott Conant started a group for impaired professionals, such as physicians, nurses and pharmacists, who meet on a regular basis.

In reference to federal supervision, Ms. Conant said that she is also supervised by a federal probation officer as a result of her conviction. Judge Stadtmueller placed her on probation after she pled guilty to one count of obtaining hydrocodone through fraud or misrepresentation. As a condition of probation, she was required to get mental health treatment and AODA treatment. She is also required to submit to random urinalysis four times a

month. She meets with Mr. Sylvasta, her probation agent, on a monthly basis. Scott is also on probation and the conditions of his probation are similar to hers. ⁶

6. Ms. Conant's federal probation ends in February 2002.

Finally, in reference to future rehabilitative efforts, Ms. Conant testified that she has a possible job opportunity in the Green Bay area. She said that there is a new hospital opening up called Aurora Bay Care. She applied and was offered a job, pending the outcome of this proceeding. She said that going back to work would help her to deal with her addiction to hydrocodone. She is willing to abide by whatever terms and conditions the Board imposes on her license in terms of continuing in AODA treatment and mental health counseling.

(B) Testimony of Expert Witness

Sharon Kotowski testified at the request of the Division of Enforcement. She is a registered nurse and is currently the Director of Nursing at Columbia Health Care Center. She obtained her nursing degree from Harper Hospital School of Nursing in Detroit in 1973. After completing her nursing training, she obtained licenses to practice nursing in Wisconsin, Michigan and New York. She is currently licensed to practice nursing in Wisconsin only. She also completed her pre-medical education at Eastern Michigan University and the University of Michigan, but did not become a doctor. She received her bachelor's degree in business administration two years ago.

Following obtaining licensure as a professional nurse, Ms. Kotowski started out in orthopedics as a staff nurse at St. Joseph Mercy Hospital in Ann Arbor, Michigan. She became the head nurse of that same unit. After that, she worked as a supervisor at Mercy Wood Hospital in Ann Arbor, Michigan, which was a psychiatric hospital. From there, she moved to the University of Michigan's Inpatient Adolescent Psychiatric Unit at the University Center. Thereafter, she moved to the University of Wisconsin and worked as a staff nurse for one year, then as the head nurse in the Inpatient Psychiatric Unit. Then she moved to Milwaukee for a year and did outpatient and inpatient geriatric psychotherapy. She moved back to Madison where she worked as the in-service education coordinator for Dane County, in inpatient mental health, then became a supervisor of that same facility. She is a Lieutenant Colonel in the United States Army Reserves. Currently she is working in operations and planning in a division which is overseeing licensed practical nurse courses that are taught through a reserve program, EMT and basic entry level for soldiers in the medical field.

Although Ms. Kotowski has worked with some patients who have AODA issues, her nursing experience has been primarily with patients who have mental health issues. *Tr. p. 25.*

Ms. Kotowski testified that she has training and experience in the use and security of controlled substances in a nursing environment. She has also supervised registered and licensed practical nurses in the use and security of controlled substances. *Tr. p. 7-8.*

In reference to professional standards, Ms. Kotowski testified that in her opinion there are fundamental ethical and character standards that form a basis for conduct in professional nursing. Besides the law, the standards include the American Nursing Association's Code of Conduct for Nurses and professional codes of conduct adopted by health care facilities. These standards focus on certain core values such as truthfulness, honesty and professionalism. *Tr. p.8-9.*

In reference to the prevalence of controlled substances in nursing environments, Ms. Kotowski testified that depending on the size of the facility, they could be on every single nursing unit, every floor. "They're pretty much everywhere because they're used in just about every field of practice. Everything from pediatrics all the way up to surgery, there are narcotics --- in the area." *Tr. p. 13.*

In reference to the systems and procedures in place for accessing and controlling the dispensing of controlled substances, Ms. Kotowski testified that there are policies and procedures in place including JACO policies and federal and state pharmacy policies. She said that most of the policies and procedures require the use of a "double-lock system" or a single key so that access is limited. Nurses are required to count the drugs and make sure that the drugs that are dispensed are given to the right patient at the right time. If the counts are off or incorrect at the end of the day, they are required to go through an extensive procedure to find out what happened to the drugs. If the missing drugs have been diverted, "the individual that took them could take them. They could be given to somebody who shouldn't have them. They could be sold". *Tr. p. 13-14.*

Ms. Kotowski further testified that, in her opinion, the only way a clinic, hospital or a doctor's office could regulate or restrict a nurse's access to controlled substances is by requiring another nurse to be present in the room when the drugs are taken out of a secured environment and requiring that nurse to follow the individual to the patient's room to make sure that the drugs are given to the patient. *Tr. p. 34-35.*

Finally, Ms. Kotowski testified that in her opinion the conduct, for which Ms. Conant was convicted, substantially relate to the practice of professional nursing. *Tr. p. 16.*

III. Discipline

Having found that Ms. Conant violated laws governing the practice of a registered 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 registered nurse or limit, suspend or revoke the license of a registered 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 Division of Enforcement recommends that Ms. Conant's license be suspended for an indefinite period of time, but not less than 5 years, and that if the suspension is stayed, she be required to comply with certain conditions. Ms. Conant recommends that she be given credit for the extensive treatment that she has undergone for the last year. Such treatment included her participation in an "inpatient program at a nationally-known facility involving all aspects of her mental, emotional and substance abuse problems, involving her family, and serious follow-up after that for the last year". She also believes that the conditions on her practice recommended by the Division are not necessary because she is already required to comply with them under her federal probation. In addition, she believes that placing limitations on her license for 5 years, as well as requiring a nurse refresher course, are excessive. *Tr. p. 75-83.*

The Administrative Law Judge recommends that Ms. Conant's license to practice as a registered nurse be suspended for an indefinite period of time, and that if the suspension is stayed, the respondent be required to comply with the conditions set forth in the proposed Order. This measure is designed primarily to ensure protection of the public.

Based upon the evidence presented, Ms. Conant is not capable of practicing as a registered 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 registered nurse, it is recommended that Ms. Conant be permitted to return to active practice subject to compliance with certain conditions as set forth in the proposed Order.

In reference to the recommendation that Ms. Conant's license be limited for at least 5 years, Ms. Kotowski testified that solving a substance abuse problem involves "a lifelong battle". In this case, five years of monitoring will provide the Board with the time needed to adequately assess the success of Ms. Conant's rehabilitative efforts. *Tr. p. 30.*

In reference to federal supervision, as noted previously Ms. Conant's probation ends in February 2002. Absent the Board's supervision, there will be no mechanism in place after that time to assure that Ms. Conant continues with her rehabilitative efforts. The Board has an obligation to the public to ensure that Ms. Conant is fit to safely and competently practice professional nursing. *Exhibit 1*

Finally, the refresher-nursing course is being recommended because Ms. Conant has not worked as a nurse since May 1996. Ms. Kotowski testified that 5 years is a long time to be away from practice and that a lot has changed since then. *Tr. p. 38.*

IV. Costs of the Proceeding

Section 440.22(2), Stats., provides in relevant part as follows:

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. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Board, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The Administrative Law Judge's recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those

costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist. In the Matter of Disciplinary Proceedings against M. Joanne Wolf, 165 Wis. 2d 1, 12, 476 N.W. 2d 878 (1991); In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III, 116 Wis. 2d 380, 385, 342 N.W. 2d 406 (1984).

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 11th day of October, 2001.

Respectfully submitted,

Ruby Jefferson-Moore

Administrative Law Judge