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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST : FINAL DECISION
: AND ORDER
TIFFANY L. TERRY, L.P.N., : LS0703201NUR
RESPONDENT. :

Division of Enforcement Case No. 06NUR321

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 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 26th day of July, 2007.

Marilyn Kaufmann
Member of the Board
Board of Nursing

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :	PROPOSED FINAL
PROCEEDINGS AGAINST	: DECISION AND
	: ORDER
TIFFANY L. TERRY, L.P.N.,	: LS0703201NUR
RESPONDENT	:

[Division of Enforcement Case # 06 NUR 321]

The parties to this action for the purposes of Wis. Stat. §227.53 are:

Tiffany L. Terry L.P.N.
2054 N. 24th Place
Milwaukee, WI 53205

Division of Enforcement
Department of Regulation and Licensing
1400 E. Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935

Board of Nursing
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

On March 20, 2007 a Complaint and Notice of Hearing was filed and served on the respondent. The respondent filed a response on March 29, 2007. The response did not contest the factual allegations of the complaint. On April 27, 2007, the respondent filed additional correspondence containing information addressing the appropriate disciplinary outcome. An evidentiary hearing was held on May 8, 2007 at which the respondent appeared without counsel and attorney James E. Polewski appeared for the complainant.

Attorney Polewski noted that the responsive pleading or answer did not raise any issue of material fact and did not present any further evidence. The respondent acknowledged that the conduct alleged had occurred and further acknowledged that there was a basis for a finding of unprofessional conduct. Both parties acknowledged that the sole issue is the appropriate discipline to be imposed.

The complainant requested revocation of the respondent's license to practice practical nursing and the imposition of costs. The respondent requested some level of discipline that would not result in an inability to continue in the practice of nursing.

FINDINGS OF FACT

1. Tiffany L. Terry ("Respondent") was born on May 8, 1970, and is licensed to practice practical nursing in the state of Wisconsin pursuant to license number 303621. This license was first granted on February 27, 2002.
2. Respondent's most recent address on file with the Wisconsin Board of Nursing is 2054 N. 24th Place, Milwaukee, Wisconsin 53205.
3. At all times relevant to this action, Respondent was working as a licensed practical nurse at St. Camillus Health Center, Wauwatosa, Wisconsin.

4. During the period June 2005 through September 2006, Respondent participated in a scheme to obtain payment from St. Camillus for time she had not worked.
5. Respondent accepted at least \$27,000 more than she was entitled to receive in payment.
6. Respondent signed a written confession stating that a co-worker entered hours for Respondent in the payroll system, even though she had not actually worked the hours claimed; Respondent further stated that she cashed the paychecks including the unearned compensation, even though she knew she was not entitled to the money.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction of this matter pursuant to Wis. Stats. § 440.035, §440.20 and §441.07.
2. The conduct described in paragraphs 3 through 5 above constitutes unprofessional conduct within the meaning of Wis. Admin. Code § N 7.04 (13).

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that Tiffany L. Terry, LPN is reprimanded for her unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that the license to practice of Tiffany L. Terry, LPN, shall be LIMITED as follows: Respondent shall, no later than 12/30/07, submit evidence that she has taken and successfully completed a four hour course in nursing ethics. She shall obtain prior approval of these courses, through the Department Monitor, and shall permit the Department Monitor, Board designee, or other staff to speak directly with the course sponsor, faculty, or staff, upon request.

IT IS FURTHER ORDERED, that the license to practice of Tiffany L. Terry, LPN, shall be LIMITED as follows:

- 1) Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a nurse or care giver or provides health care, currently or in the future.
- 2) Respondent shall arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active nursing practice worked during that quarter. These reports shall assess Respondent's work performance, integrity, and trustworthiness.
- 3) Practice limitations
 - a. Respondent shall practice only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee and only in a work setting pre-approved by the Board or its designee. Respondent may not work in a home health care, hospice, pool nursing, or agency setting, other than her current employment, without express approval of the Board.
- 4) Department Monitor
 - a. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Wisconsin Department of Regulation and Licensing

Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817

- 5) Required Reporting by Respondent
 - a. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent. Additionally, every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.
- 6) Petitions for Modification of Limitations or Termination of Order
 - a. Respondent may petition the Board for modification of the terms of this Order or termination, however no such petition for modification shall occur earlier than one year from the date of this Order.
- 7) Costs of Compliance
 - a. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order.
- 8) Costs of Proceeding
 - a. The Respondent is ordered to pay the costs of the department pursuant to Wis. Stats. § 440.22 (2)

OPINION

It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct.

State v. Aldrich, 71 Wis. 2d 206, 209 (1976).

Punishment of the licensee is not an appropriate consideration.

State v. McIntyre. 41 Wis. 2d 481, 485 (1969).

The state's purpose in licensing professionals is to protect its citizens.

Strigenz v. Department of Regulation and Licensing 103 Wis.2d at 286, 307 N.W.2d at 667.

License revocation is the ultimate means of protecting the public short of fining or imprisonment.

Strigenz v. Department of Regulation and Licensing, 103 Wis.2d 281, 287, 307 N.W.2d 664 (1981).

As used in s. 441.07 (1) (d), Stats., "misconduct or unprofessional conduct" means any practice or behavior which violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public. "Misconduct or unprofessional conduct" includes, but is not limited to, the following:

- (1) Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing. A certified copy of a judgment of conviction is prima facie evidence of a violation;
Wis. Admin Code § N 7.04

The issue presented is to determine the appropriate sanction to be imposed upon the respondent based upon her admitted violation of the code of conduct for nurses. As noted above there are three purposes which may validly be considered. These

are;

- To promote the rehabilitation of the licensee.
- To protect the public
- To deter other licensees from engaging in similar conduct.

It would be inappropriate to base a sanction decision on a desire by the board or the public for punishment. Punishment lies within the province of the criminal justice system. The respondent has not been subjected to that process for these events.

The parties have identified some facts and circumstances that they suggest should be considered in the analysis as either aggravating or mitigating factors.

The attorney for the complainant argues that the sole issue is the severity of the discipline to be imposed. He asserts, correctly, that the respondent's answer admits engaging in conduct that constitutes unprofessional conduct and subjects the respondent to discipline. The complainant asserts the appropriate level of discipline to be revocation of her license and imposition of costs. The complainant argues that while this is a tragic case, the respondent's inappropriate conduct was long term, occurring over a period of 9 months or longer, and the conduct was intentional rather than negligent. He correctly points out that the sum of money involved, over \$27,000.00, is a significant sum. The attorney for complainant points out that this behavior causes an observer to question whether the respondent is competent and safe to provide care to people who are vulnerable.

The respondent acknowledges her violation. She describes it as a mistake in judgment that was not related to any quality of care issue. The respondent has been employed in the health care field since she was 15. She produced job performance evaluations which showed appropriate reviews. The respondent is a single mother with two daughters, one in high school and one entering college.

The respondent asserted that she did not set out to misappropriate money from her employer but rather, in a mistake of judgment, took advantage of an opportunity which involved submitting time slips claiming pay for hours which were unworked. The respondent readily accepted responsibility when caught and voluntarily entered into a restitution repayment agreement with her (former) employer. She has been making substantial monthly payments under the terms of that agreement. Interestingly, the employer did not pursue criminal sanctions against the respondent.

Many of the factors referred to are appropriate considerations in determining the appropriate sanction. It should also be noted that reasonable minds may differ on the weight to be given to various factors.

A primary consideration is the seriousness of the violation. As the seriousness of the violation increases, it is appropriate to place significantly more emphasis on a sanction that deters others and protects the public. For less serious offenses, it is more appropriate to explore prospects of rehabilitation as a primary goal of the sanction.

The violation was a continuing one that extended over a number of months and involved the misappropriation of a significant sum of money, over \$27,000.00. The type of violation raises legitimate concerns of the possibility of the respondent taking advantage of vulnerable patients in the future. These considerations suggest the violation is more than a minor one.

The violation was in the nature of a property offense, rather than one that resulted in physical harm or the potential of physical harm to a patient. The offense did not involve a violation of a standard of care but rather was a violation of professional standard dealing with personal behavior. The respondent's clinical skills are not placed in question by this offense.

The respondent's violation involved intentionally padding her time sheet to obtain compensation she had not earned. It is clear that she knew her behavior was wrong and now refers to it as a mistake in judgment. She offers as mitigation that she is a single mother, that she used the funds to pay outstanding medical bills and tuition at a private high school for her two daughters. It is understandable that the respondent would proffer circumstances that may mitigate or to some degree justify her actions. It is the rare person who would be comfortable acknowledging that their bad behavior was not justified to any degree.

While I understand her desire to temper the negative reaction to her behavior and to protect her own self image by the

proffering of potentially mitigating circumstances, her attempt is weak and unavailing. Many people have outstanding debts accumulated through no fault other than the ravages of age, nature or happenstance. People everywhere face unexpected medical issues, property loss due to natural events, accumulated debts due to job loss, and many other circumstances easily imagined but too numerous to mention. Such circumstances do not justify the misappropriation of another's property. Nor is the desire to provide a private high school education to our children. All parents want the best for their children; this is not a justification for illegal behavior.

The respondent acknowledges that her behavior was wrong and refers to it as a mistake in judgment. She avers that she did not set to plan a theft but rather took advantage of a circumstance presented to her. Again, this view of mitigating factors is somewhat understandable and certainly common. Many people violate laws with impunity when they believe the risk of being caught is slim; witness the number of people who violate the speed limit when out of the view of the nearest state trooper. Again, this rationale does not excuse her conduct. What is of importance is whether she accepts responsibility for behavior. Will she accept the sanctions imposed because she recognizes the wrongfulness of her acts or as some drivers do, does she continue to justify her behavior because others have done or are doing it without penalty? This is the first question in a determination of the possibility of rehabilitation as an option. The refusal to accept responsibility indicates a low likelihood of effective rehabilitation.

The violation here is one of medium severity; it is easy to imagine more serious violations resulting in extreme physical harm. On the hand, one can easily identify bad acts by nurses that are significantly less serious than this one. Therefore an appropriate sanction must contain some elements that protect the public from potential future bad behavior as well as some elements that would deter other licensees from similar behavior. However, this is not the most serious of offense for which the ultimate public protection mechanism of revocation is the only option.

In fashioning a sanction, the possibility of rehabilitation is a legitimate consideration. As noted, the acceptance of responsibility is the first step toward rehabilitation. Other considerations include whether the respondent demonstrates appropriate understanding of the wrongfulness of their act and whether they are truly, appropriately remorseful.

The respondent has stated that she accepts responsibility for the wrongfulness of her acts. In many circumstances, it is easy to mouth the words without meaning. It is useful therefore to review the actions of the respondent to determine whether the expression of regret and remorse is genuine. One such marker is the acceptance of responsibility for restitution. Willingness to attempt to make the victim whole is generally accepted as suggesting remorse and rehabilitation. The respondent has not only agreed to provide restitution but it is uncontroverted that she has made significant payments^[1] to the victim.

Not only is this a predictor of a high likelihood of effective rehabilitation but can also be an effective argument against revocation. Revocation of her license, with the likely result being a disruption in her income, would interfere with her ability to continue the restitution stream that has been started.

Other appropriate factors to be considered in determining an appropriate sanction include whether the respondent has suffered other negative consequences that impact on public protection, deterrence or rehabilitation. The respondent was terminated from her employment. Her employer sought restitution, which as noted above she agreed to assume responsibility for. It is noteworthy as well that the employer did not seek criminal sanctions against her. While the reasons for this decision were not disclosed, the victim's refusal to redress through the criminal justice system and the decision to resolve the matter with a private restitution agreement also suggest that this violation is not of the most grievous type for which the ultimate public protection sanction of revocation is required. The victim's actions in avoiding the criminal justice system suggest that they also believe that the public can be protected by steps less severe than imprisonment or revocation.

While the circumstances of the violation do not raise concerns over the respondent's clinical skills, some reeducation in the area of professional ethics and personal responsibility would certainly benefit the respondent and enhance her rehabilitation. Therefore, a requirement of successful completion of an ethics course is appropriate.

The circumstances of the violation suggest that, while the respondent has a fundamental understanding of the difference between right and wrong, she is susceptible to engaging in wrongful conduct when presented with an opportunity and low risk of exposure. Therefore, requiring the respondent to work only under supervision of someone who is aware of this predilection

is also appropriate.

Considering the relative seriousness of the violation, the needs of public protection, the message of deterrence, the merits and likelihood of rehabilitation, it appears that a reprimand coupled with license limitation designed to protect the public and aid the rehabilitation of the respondent is the appropriate sanction.

Costs

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 of Nursing, and that the board's discretion extends to the decision whether to assess the full costs or only a portion of the costs.

The ALJ's recommendation that the full costs of the proceeding be assessed is based on two factors. First, 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 an evidentiary or default hearing, that licensee should bear the costs of the proceeding.

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 ____ day of May, 2007

Respectfully Submitted;

Dennis C. Schuh
Administrative Law Judge

[1] Over \$3,500.00 had been repaid at the time of the hearing.