

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

JULIE A. BIRTZER, RN,
RESPONDENT.

:
:
:
:

FINAL DECISION AND ORDER
LS0905071NUR

Division of Enforcement Case # 08NUR186

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

Julie A. Birtzer
18253 W. 57th Avenue
Chippewa Falls, WI 54729

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

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

PROCEDURAL HISTORY

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 Wisconsin Board of Nursing. The Board has reviewed the attached Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Julie A. Birtzer, R.N., the Respondent herein, date of birth 3/9/58, is duly licensed as a registered nurse in the state of Wisconsin, license #96016-30. This license was first granted on 3/20/87.
2. Respondent's most recent residence address on file with the Wisconsin Board of Nursing is 18253 W. 57th Avenue, Chippewa Falls, Wisconsin 54729.
3. At all times relevant to this action, Respondent was working as a registered nurse in the state of Wisconsin.
4. On 9/29/08, Respondent was convicted on a plea of no contest to the crime of 2nd degree intentional homicide in violation of Wis. Stat. § 940.05(1)(b). The conviction was based on an incident which occurred on 6/13/07 in which the Respondent shot and killed her boy friend of 27 years in their residence while he was asleep. The Respondent had been the victim of physical and verbal abuse over the course of their 27 year relationship. In the plea agreement that resulted in the no contest plea and the conviction, the State conceded that the death was caused because the Respondent subjectively believed that she or another was in imminent danger of death or great bodily harm and that Respondent subjectively believed that the force used was necessary to defend herself or the other person. The plea agreement further stated that the Respondent's beliefs as above stated were objectively unreasonable. The court imposed and stayed an initial confinement of 5 years and placed the Respondent on probation for 10 years.
5. Respondent was convicted of a crime substantially related to the practice of registered nursing.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction to act in this matter, pursuant to Wis. Stat. § 441.07, and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).
2. The conduct described in paragraphs 4 and 5, above, constitutes a violation of Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(1) in that Julie A. Birtzer was convicted of a crime substantially related to the practice of registered nursing.
3. The Wisconsin Board of Nursing has the authority pursuant to Wis. Stat. § 440.22 to assess the costs of this proceeding against the Respondent.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license of Julie A. Birtzer to practice as a registered nurse in the state of Wisconsin is REVOKED.
2. Julie A. Birtzer shall not at any time while her license to practice as a registered nurse is revoked practice or attempt to practice as a practical nurse or as a registered nurse in the state of Wisconsin.
3. Julie A. Birtzer shall not at any time while any of the terms of this Order remain in effect practice or attempt to practice as a practical or a registered nurse in the state of Wisconsin under the terms of the Nurse Licensure Compact.
4. Julie A. Birtzer shall not make application to the Wisconsin Board of Nursing for a license to practice as a registered nurse in the state of Wisconsin for a period of 1 year from the effective date of this Order.

IT IS FURTHER ORDERED that:

5. Julie A. Birtzer shall be eligible to apply for a license to practice as a registered nurse after 1 year from the effective date of this Order.
6. If Julie A. Birtzer makes application for a license to practice as a registered nurse pursuant to paragraph 5 of this Order, Julie A. Birtzer shall:
 - a. Demonstrate to the satisfaction of the Board of Nursing that she has not engaged in any acts which would constitute the practice of practical nursing as defined by Wis. Stat. § 441.001(3) or the practice of professional nursing as defined by Wis. Stat. § 441.001(4) between the effective date of this Order and the date upon which Julie A. Birtzer filed her application for a license. The prohibitions on engaging in acts which would constitute the practice of professional nursing under this paragraph do not include acts engaged in while acting under the limited license issued by the Board of Nursing under paragraph 6.c. of this Order.
 - b. Submit to a psychological/psychiatric evaluation by a qualified health care professional approved by the Board of Nursing or its designee and authorize the health care professional to submit a report to the Board of Nursing detailing his or her findings and professional opinions regarding the mental health of Julie A. Birtzer. Julie A. Birtzer shall be eligible for a license to practice as a registered nurse only if the health care professional approved by the Board of Nursing affirmatively states in his or her report to the Board of Nursing that in his or her professional opinion, based upon the factors considered in the psychological/psychiatric evaluation, Julie A. Birtzer can safely engage in the practice of registered nursing. Julie A. Birtzer shall pay all costs associated with obtaining the psychological/psychiatric evaluation and preparation of the report.
 - c. Take and satisfactorily complete a refresher course in the practice of registered nursing pre-approved by the Board of Nursing. The refresher course shall not be commenced prior to 1 year from the effective date of this Order but shall be commenced 6 months or less from the date on which Julie A. Birtzer files her application for a license to practice as a registered nurse pursuant to paragraph 5 of this Order. The Board of Nursing, acting on an application filed by Julie A. Birtzer, shall grant to Julie A. Birtzer a limited license to permit her to engage in the practice of registered nursing while she is actively participating in the refresher course. The scope of practice permitted under this limited license shall be restricted to the practice of registered nursing as required by her participation in the refresher course. Julie A. Birtzer shall be responsible for paying all costs associated with enrollment and participation in the refresher course.
 - d. Shall demonstrate at the time she files her application for a license to practice as a registered nurse pursuant to paragraph 5 of this Order that she has paid the costs of this proceeding as assessed in paragraph 10 of this Order.
7. If the Board of Nursing grants Julie A. Birtzer's application for a license to practice as a registered nurse made

pursuant to paragraph 5 of this Order, the Board of Nursing shall initially grant to Julie A. Birtzer a limited license which shall include the following terms:

a. All individuals or entities who employ Julie A. Birtzer as a registered nurse shall submit quarterly reports to the Board of Nursing assessing Julie A. Birtzer's work performance. The quarterly reports shall be required until Julie A. Birtzer has completed 12 months of full time employment as a registered nurse. Full time employment for purposes of this requirement is defined as a minimum of 30 hours of work per week as a registered nurse. Julie A. Birtzer shall be responsible for the timely filing of these reports with the Monitor in the Department of Regulation and Licensing.

b. Julie A. Birtzer, at the time of making application to a potential employer for employment as a registered nurse, shall provide to the employer a copy of this Final Decision and Order.

8. The limited license granted pursuant to paragraph 7 of this Order shall continue for a period of 1 year from the date on which it is granted or until all of the terms of this Final Decision and Order have been complied with whichever period of time is the greater. After all of the terms of this limited license have been satisfied, the Board of Nursing shall grant to Julie A. Birtzer a full and unrestricted license to practice as a registered nurse in the state of Wisconsin.

9. All requests for approval of the refresher course, all quarterly work reports filed by employers, the report from the psychological/psychiatric evaluation and all other documents or correspondence submitted pursuant to the terms of this Final Decision and Order shall be mailed, faxed or delivered to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone no. (608) 267-3817
Fax no. (608) 266-2264

IT IS FURTHER ORDERED that:

10. Julie A. Birtzer shall pay the costs of this proceeding in the amount of \$ 994.23 within 180 days of the effective date of this Final Decision and Order. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone no. (608) 267-3817
Fax no. (608) 266-2264

11. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Julie A. Birtzer's license. The Board of Nursing, in its discretion may, in the alternative, impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Julie A. Birtzer fails to pay costs as ordered, Julie A. Birtzer's license #96016-30 SHALL BE SUSPENDED, without further notice or hearing, until Julie A. Birtzer has complied with this term of the Order.

12. This Order is effective on the date of its signing.

By: Marilyn Kaufmann
A Member of the Board

5/7/09
Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

JULIE A. BIRTZER, RN, :
RESPONDENT. :

STIPULATION

LS# _____

Division of Enforcement Case # 08NUR186

It is hereby stipulated between Julie A. Birtzer, R.N., Respondent herein, and Gilbert C. Lubcke, for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement, case #08NUR186. Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Board of Nursing. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board of Nursing's Final Decision and Order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board of Nursing, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board of Nursing, the parties agree not to contend that the Board of Nursing has been prejudiced or biased in any manner by consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board of Nursing ever assigned as a case advisor in these investigations may appear before the Board of Nursing in open or closed session, without the presence of the Respondent or her attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board of Nursing may have in connection with the Board of Nursing's deliberations on the Stipulation. The Respondent understands that the attorney or other agent for the Division of Enforcement or the case advisor, in responding to questions asked by the Board of Nursing, may be required to provide information to the Board of Nursing which may be construed by the Board of Nursing as not weighing in favor of accepting this proposed Stipulation and Final Decision and Order. The Respondent shall not contend that any responses made by the attorney or other agent for the Division of Enforcement or by the case advisor in response to questions posed by the Board of Nursing constitute a failure by the attorney or other agent for the Division of Enforcement or by the case advisor to speak in support of this agreement. Additionally, any such board advisor may vote on whether the Board of Nursing should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Board of Nursing adopt this Stipulation, the Board of Nursing's Final

Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Enforcement joins Respondent in recommending the Board of Nursing adopt this Stipulation and issue the attached Final Decision and Order.

Julie A. Birtzer, R.N.
18253 W. 57th Ave.
Chippewa Falls, WI 54729

Date

Gilbert C. Lubcke, Attorney
Division of Enforcement
Wisconsin Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date