FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
PATRICIA BRITZKE POPOFF RESPONDENT.	:	LS9207101NUR

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 board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 30 day of October, 1992.

Jacqueline Johnson RN M.

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	Case No. LS-9207101-NUR
PATRICIA BRITZKE POPOFF,	:	(DOE case number 92 NUR 086)
RESPONDENT.	:	

PARTIES

The parties in this matter under sec. 227.44, Wis. Stats. and sec. RL 2.036, Wis. Adm. Code, and for purposes of review under sec. 227.53, Wis. Stats. are:

Patricia Britzke Popoff
12728 Desert Cove Avenue
El Mirage, AZ 85335

Board of Nursing
1400 East Washington Ave.
Madison, WI 53708

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

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint with the Board of Nursing on July 10, 1992. A disciplinary proceeding (hearing) was scheduled for September 22, 1992. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on July 10, 1992 to Patricia Britzke Popoff at the above address; this mailing was received by Ms. Popoff on July 14, 1992. At the same time, a notice of hearing was sent by certified mail to Ms. Popoff at 300 9th Street, Menasha, WI 54952; this mailing was received by Ms. Popoff on July 23, 1992.

B. Ms. Popoff did not file a formal answer, but she responded by letter dated July 24, 1992.

C. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on September 22, 1992. Ms. Popoff did not appear. The Board of Nursing was represented by Attorney Steven Gloe of the Department's Division of Enforcement. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. Respondent Patricia Britzke Popoff is and was at the time of the facts set forth below a practical nurse licensed in the state of Wisconsin, under license number 28593, originally granted on May 28, 1986.

2. Ms. Popoff's most recent address on file with the board is 12728 Desert Cove Avenue, El Mirage, AZ 85335.

3. The Arizona Board of Nursing took disciplinary action against Ms. Popoff's license to practice as a practical nurse in Arizona and on March 5, 1992 it revoked Ms. Popoff's license. This action was based on allegations that

(a) Ms. Popoff was employed as a Licensed Practical Nurse at Life Care Center of North Glendale, Arizona, from March 13, 1991 to October 28, 1991, and that as part of her duties she was assigned to care for patient M.O., 89 years old, who was diagnosed as suffering from angina, back pain, ASHD, hypertension and diabetes, and was not considered ambulatory;

(b) Ms. Popoff agreed to provide patient care for M.O. as a live-in companion, and M.O. was released from Life Care Center into Ms. Popoff's care on August 15, 1991;

(c) Ms. Popoff lived with M.O. and provided some care to her from August 15, 1991 to September 3, 1991;

(d) on September 3, 1991, Ms. Popoff left M.O.'s residence and did not return. M.O. was left alone without care for 48 hours until M.O.'s daughter arrived for a visit on September 5, 1991.

CONCLUSIONS OF LAW

I. The Board of Nursing has personal jurisdiction over the Respondent, based on her holding a credential issued by the board.

II. The Board of Nursing has jurisdiction over the subject-matter of this complaint, under sec. 15.08(5)(c), Wis. Stats, sec. 441.07(1), Wis. Stats, and sec. N7.04, Wis. Admin. Code, based on the filing of a complaint alleging unprofessional conduct.

III. Ms. Popoff is in default under sec. RL 2.14, Wis. Admin. Code for failing to appear at the scheduled hearing in this matter.

IV Ms. Popoff has engaged in misconduct or unprofessional conduct under sec. N7.04(7), Wis. Stats, by having disciplinary action taken against her license in another jurisdiction.

ORDER

THEREFORE, IT IS ORDERED that the license issued to respondent Patricia Britzke Popoff to practice as a practical nurse in Wisconsin be revoked for not less than one year, under the provisions of sec. 441.07, Wis. Stats., effective on the tenth day after this order is signed on behalf of the Board of Nursing.

OPINION

Upon Ms. Popoff's failure to appear at the hearing, she is in default. She wrote a letter to the undersigned administrative law judge, which was accepted as an answer, but her statements in the letter cannot be considered testimony or admissible evidence. Due to her failure to appear, under sec. RL 2.14, Wis. Admin. Code, the board may make findings and enter an order on the basis of the complaint and other evidence.

The Board of Nursing of the State of Arizona found that Ms. Popoff's conduct as set out in exhibit A attached to the complaint violated Arizona statutes and rules, and on March 5, 1992, the Arizona board revoked a license issued to Ms. Popoff to practice as a practical nurse in that state. Discipline against a license in another jurisdiction is a basis for a finding of misconduct or unprofessional conduct under sec. N7.04(7), Wis. Admin. Code, and such a finding is appropriate in this case, given the facts underlying the Arizona action.

The discipline to be imposed on a finding of misconduct or unprofessional conduct should be based on the protection of the public, deterrence to other licensees, and rehabilitation for the offender. In this case, protection of the public is paramount, and in the absence of any admissible evidence showing that Ms. Popoff's actions were not grossly unprofessional, as they

appear, the appropriate discipline is revocation.[1] As to deterring other nurses from similar conduct, I would prefer to think that nurses do not need an order for revocation of a fellow-nurse's license to remind them of their professional responsibilities; however, it is possible that such an order could have an effect at the margin. A nurse contemplating leaving a patient alone a little longer than s/he should might be deterred by realizing that s/he would be taking a risk not only with the patient but with his/her license. Revocation in this jurisdiction is unlikely to have any rehabilitative effect on Ms. Popoff beyond any already brought about by the action of the Arizona board.

Under sec. 441.07(3), Wis. Stats, the board may reinstate a revoked license no earlier than one year following revocation, and if Ms. Popoff still wishes to practice in Wisconsin and petitions to reinstate her license here, I recommend to the board that it do so as soon as she satisfies the Arizona board of her fitness to practice as a practical nurse, and reinstates her license there.

The costs involved in this disciplinary proceeding have been minimal, Ms. Popoff did not actively impede this proceeding, and she is likely in reduced circumstances, so as recommended by Mr. Gloe no order for costs is made.

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[1]Prior to the hearing, Mr. Gloe offered a stipulation to Ms. Popoff whereby the disciplinary proceeding would be dismissed if she would surrender her license voluntarily. The deadline for the return of that stipulation was September 17, 1992, five days before the hearing, and it had not been received by the time of the hearing. Mr. Gloe stated, however, that if Ms. Popoff signs and returns the stipulation before the board acts on this proposed decision, he would be willing to let the board consider accepting the stipulation in lieu of the order contained herein.

Dated September 24, 1992.

John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

BDLS2-2279

NOTICE OF APPEAL INFORMATION

(N tice of Rights for Rehearing or Judicial Review, the times allowed for each, and the identification of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Board of Nursing.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Board of Nursing.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing f the petition for rehearing, or within 30 days after the final dispositi n by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing f this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Board of Nursing.

The date of mailing of this decision is November 3, 1992.