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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
NANCY JOAN (KOZAK) VOLK, RESPONDENT.	:	LS9212084NUR

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 7 day of May, 1993.

Jacqueline Johnson RN MS

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	Case No. LS-9212084-NUR
NANCY JOAN (KOZAK) VOLK,	:	(DOE case number 92 NUR 137)
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:

Nancy Joan Volk
4936 West Didion
Tucson, AZ 85741

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 December 8, 1992. A disciplinary proceeding (hearing) was scheduled for January 28, 1993. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on December 8, 1992 to the respondent, Nancy Joan (Kozak) Volk, at her last-known address on file with the Board, 776 Bird Dog, Austin, TX 78741.

B. The complaint and notice of hearing were apparently forwarded to Ms. Volk, because the next document filed in the case was a letter from attorney Steven M. Gloe of the Division of Enforcement to Ms. Volk at 1925 West Sauvignon, Tucson, AZ 85746, thanking her for her letter of December 26, 1992 and suggesting the need for a prehearing conference. The letter dated December 26, 1992 serves as Ms. Volk's answer to the complaint.

C. Ms. Volk wrote to Mr. Gloe on January 15, 1993, and he responded on January 21, 1993 with arrangements for a prehearing conference.

D. A prehearing conference was held by telephone on January 25, 1993, at which time it was agreed that Ms. Volk would submit additional documentation, that the hearing would be rescheduled to February 11, 1993, and that Ms. Volk would appear by phone.

E. On February 10, 1993 Ms. Volk left a phone message for the undersigned that a member of her immediate family had just died, but that she could be reached at a different phone for the hearing. A brief phone conference was held on February 11, 1993 and although Ms. Volk indicated a willingness to proceed with the hearing, it was rescheduled to February 18, 1993. Ms. Volk also provided a new address of 4936 West Didion, Tucson, AZ 85741.

F. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on February 18, 1993. Ms. Volk appeared personally by telephone, without legal representation. The Board of Nursing was represented by Attorney Gloe. The hearing was recorded, and a transcript of the hearing was prepared and delivered on March 9, 1993. Five exhibits were admitted into evidence, designated A, 1, 2, 3, and 4. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. Respondent Nancy Joan (Kozak) Volk is and was at the time of the facts set forth below a registered nurse licensed in the state of Wisconsin, under license number 62981, originally granted on September 30, 1975.

2. On November 17, 1992 the Texas Board of Nurse Examiners took disciplinary action to revoke a license to practice as a registered nurse previously issued to Ms. Volk (then Mrs. Kozak) in that state. The basis for the disciplinary action, which Ms. Volk admits, was that she provided false information regarding her academic credentials on employment applications submitted to Holy Cross Hospital, the Texas Industrial Accident Board, and the City of Austin, Texas on March 21, 1984, February 14, 1990, March 19, 1990, and October 22, 1991. A hearing on the Texas Board's disciplinary complaint was held on September 21, 1992, continued for hearing to October 19, 1992, and held open until October 26, 1992 for receipt of documents. The Texas Proposal for Decision is contained in exhibit A, as is the final Order of the Board. The Proposal for Decision recommended a three-year period of probation (a stayed suspension). The Order of the Board rejected that recommendation, choosing revocation instead. Ms. Volk at one time worked in a position developing reimbursement guidelines for healthcare providers for the Texas Industrial Accident Board (Respondent's Answer, p. 2), and as stipulated by Mr. Gloe, "there were political overtones to the decision to revoke" (transcript, p. 15).

3. During the time period in which she falsified her academic credentials, Ms. Volk's then-husband abused her physically and mentally, and pressured her to obtain high-paying employment.

4. Ms. Volk has remarried, as of September 1992.

5. On October 2, 1992, Ms. Volk submitted an application to the Arizona State Board of Nursing for Registered Nurse Licensure by Endorsement.

Item 14 states: "List all states in which you have been or are currently licensed and license number." **Ms. Volk entered "Wisc - 62981, Virginia # unknown".**

Item 15 asks "Has any disciplinary action, consent order or settlement agreement been imposed or is any action pending on you in any state or jurisdiction?" **Ms. Volk checked "No".**

Ms. Volk failed to mention her Texas license in item 14, and gave a materially false and misleading answer to item 15.

6. Ms. Volk has received numerous commendations for her work, both as a nurse and as an administrator.

7. Ms. Volk was discharged on February 8, 1993 from her employment with Nurses' House Call of Tucson, Arizona.

CONCLUSIONS OF LAW

I. The Board of Nursing is the legal authority responsible for issuing and controlling credentials for nurses in Wisconsin, under chapter 441, Wis. Stats. The Board has jurisdiction over Ms. Volk's license.

II. The Board of Nursing has personal jurisdiction over the Respondent, based on her holding a credential issued by the board. She received timely notice of the hearing.

III. The Board of Nursing has jurisdiction over the subject-matter of this complaint, under sec. 15.08(5)(c), Wis. Stats, sec. 441.07, Wis. Stats, and ch. N 7, Wis. Admin. Code, based on the filing of a complaint alleging unprofessional conduct.

IV. Ms. Volk is subject to disciplinary action against her license by having disciplinary action taken against her license in another state, which constitutes "misconduct or unprofessional conduct" under sec. N 7.04(7), Wis. Admin. Code.

ORDER

THEREFORE, IT IS ORDERED that the license to practice as a registered nurse previously issued to Nancy Joan Volk be suspended for a period of six months, effective 10 days after this order is signed on behalf of the Board, and that upon reinstatement, the license be limited, as follows:

1. Ms. Volk must provide notice in writing to the Board of any new employment or change of employment in health care or a health-care-related field, within 10 days of her starting date, including any employment on the effective date of this order;

2. Ms. Volk must inform any employer in health care or a health-care-related field of the disciplinary actions in Texas and Wisconsin and the status of her license in Wisconsin, Texas, and Arizona; and

3. until and unless this order is amended by the Board of Nursing, Ms. Volk must obtain professional counseling and have her counselor submit semiannual reports to the Board confirming her participation. The counseling may deal with any issues specific to Ms. Volk's situation, but it must address Ms. Volk's failures to be truthful.

OPINION

Under sec. N 7.04(7), Wis. Admin. Code, Ms. Volk is subject to disciplinary action against her nursing license in this jurisdiction because disciplinary action was taken against a nursing license issued to her in another jurisdiction (Texas). The basis for the action in Texas was that Ms. Volk made false statements in employment applications by manufacturing non-existent academic credentials.

This is a sufficient basis for the imposition of discipline in Wisconsin. The purposes of professional discipline have been set forth in various attorney discipline cases, including Disciplinary Proc. Against Kelsay, 155 Wis.2d 480, 455 N.W.2d 871 (1990). In that case the Wisconsin Supreme Court stated "discipline for lawyer misconduct is not intended as punishment for wrongdoing; it is for the protection of the public, the courts and the legal profession from further misconduct by the offending attorney, to deter other attorneys from engaging in similar misconduct and to foster the attorney's rehabilitation." That reasoning has been extended by regulatory agencies to disciplinary proceedings for other professions.

Despite the seriousness of Ms. Volk's actions, protecting the public is not the primary consideration here, as it is in many other cases. I accept the letters of commendation provided by Ms. Volk (exhibits 1 and 4) as evidence that she has performed well as both a nurse and an administrator. The termination of her employment with Nurses' Home Care on February 8, 1993 is the only available blemish on the record of her performance. Besides alleging that Ms. Volk was untruthful about the status of her nursing licenses, her employer at Nurses' Home Care asserted that Ms. Volk neglected a patient's care (exhibit 2). Such an allegation is certainly cause for concern, but the information is untested hearsay, uncorroborated by any other information in this case, and it would be unfair and premature to rely on it as the basis for any action here. At this stage I do not accept Ms. Volk's former employer's statements regarding patient care as facts. If Arizona institutes a disciplinary action based on the alleged incident of patient neglect, and finds it to have occurred, then more severe reciprocal discipline might well be appropriate here.

The more important purpose for discipline in this case is the licensee's rehabilitation. Ms. Volk has stated, and in the absence of any evidence to the contrary I have accepted as a fact, that her former husband abused her physically and mentally, and pressured her to falsify employment applications in order to obtain high-paying jobs. She has obtained a divorce from that person and has now remarried. Assuming that Ms. Volk lied only under duress, professional discipline would be unnecessary to ensure her future truthful behavior. (I am not blind to the possibility that Ms. Volk may have exaggerated the duress as an excuse for her actions, but that would not change the recommendation for discipline given below.) Ms. Volk stated repeatedly (transcript, pp. 26 and 33) that she is "trying to put that behind me as far as possible and get on with my life". However, evidence which became part of the record in this case almost incidentally shows that Ms. Volk has not entirely recovered from the effects of that relationship.

Ms. Volk would prefer that this Board absolve her of responsibility because of her previous unfortunate situation, or at most punish her for her past mistakes and leave her license unencumbered for the future. I agree that the primary goal here is to get Ms. Volk the help she needs, but the following evidence shows just how complicated achieving such a goal can be, and just how difficult it can be to separate a person's compelled behavior from her own actions. On October 2, 1992, after she remarried, and between the first and second hearing dates for her disciplinary case in Texas, Ms. Volk applied to the Arizona State Board of Nursing for licensure by endorsement (exhibit 3). (Actually, the dates on which she prepared and mailed the application are unknown, but she signed the application before a notary on October 2nd.) She mentioned only her Wisconsin license and a license in Virginia in her application, and she simply lied in her response to a question asking whether she had ever been the subject of disciplinary proceedings. She was asked in the hearing about these items, and her answers were unconvincing (transcript, pp. 27-29 and 41-42). Also, (although I have declined to make factual findings based on the letters from her employer at Nurses' Home Care) if her employer is to be believed at all, Ms. Volk misled her about the purpose of a letter of commendation.

Ms. Volk cannot claim duress for these actions after she ended her first marriage. It is apparent that the false statements which led to the revocation of her Texas license were only a symptom of a more serious malady. Without attempting to describe it clinically, I see that this record shows that Ms. Volk has unusual difficulty disclosing information which she thinks will hurt her.

Such an inability to be truthful could easily serve as grounds for revocation. If she is allowed to retain her license at all, she must practice only under limitations which will encourage her honesty, and the discipline I have recommended is intended to do that. Requiring her to provide notice to this Board of all health-care-related employment, and to inform employers of her past problems, are limitations designed to force her to be "up-front" with her employers and remove any temptation to falsify her credentials or the status of her license. Requiring her to obtain professional counseling is a limitation designed to assist her in addressing her failures to be truthful and any related issues. Even though those limitations may make it more difficult for her to find employment in the first place, they are designed to reward her for honestly confronting the difficulties which she has had in the past and which she continues to have. In return for her willingness to work in and with those limitations, the Board will be indicating its willingness to allow her to use her Wisconsin license as a basis for licensure in other states as she rehabilitates herself. Different limitations were proposed by Mr. Gloe (transcript, p. 40), which would be directed more toward the quality of Ms. Volk's care, and this has not been put in issue by the facts here.

The final basis for discipline is its effect on other members of the profession. Dishonesty such as that exhibited by Ms. Volk must be discouraged. A suspension of Ms. Volk's license in Wisconsin will have no direct effect on her, but no nurse reading this case should think that falsifying academic credentials will result in anything less than a loss of license of significant duration. For this reason alone I recommend a six-month suspension.

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code. However, there is no agreement on what circumstances lead to the imposition of costs in a disciplinary case. The approach I prefer is to impose costs only when a respondent has been recalcitrant or obstructionist. Throughout the process, Ms. Volk cooperated with Mr. Gloe and with any requests made of her in prehearing conferences, even when compliance with those requests endangered her employment (and in fact led to her termination from Nurses' Home Care). Assuming that the Division of Enforcement's costs have been low, and not wishing to make these proceedings appear punitive, I have not included an order for costs.

Dated March 12, 1993.

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

BDLS2-2804

NOTICE OF APPEAL INFORMATION

(Notice 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 of the petition for rehearing, or within 30 days after the final disposition 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 of 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 May 12, 1993.