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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

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| IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST | : | FINAL DECISION AND ORDER |
| RUBY SWANIGAN DUKES, R.N., RESPONDENT. | : | LS9605152NUR |

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 9th day of January 1997.

Timothy J. Burns CRNA

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

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**IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST**

**PROPOSED DECISION**
**Case No. LS-9605152-NUR**

**RUBY SWANIGAN DUKES, R.N.,**
**RESPONDENT.**

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## PARTIES

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

Ruby Swanigan Dukes, R.N.
3731 West North Avenue
Milwaukee, Wisconsin 53208

Board of Nursing
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708

This matter was commenced by the filing of a Notice of Hearing and Complaint on May 16, 1996. A hearing was held in the above-captioned matter on June 25, 1996. Atty. James W. Harris appeared on behalf of the Division of Enforcement. Ms. Dukes did not appear at the hearing.

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. Ruby Swanigan Dukes (d.o.b. 05/12/59), is licensed as a registered nurse in the State of Wisconsin (license #112153, which was first granted on February 12, 1993). Respondent's most recent address on file with the Department of Regulation and Licensing is 3731 West North Avenue, Milwaukee, Wisconsin 53208.

2. In October, 1994, respondent was employed as a nurse at Bradford Terrace Nursing Home in Milwaukee, Wisconsin.

3. During the time that respondent was an employee of Bradford Terrace Nursing Home, a Visa credit card issued to a resident of the nursing home was taken from the resident without the resident's consent. The stolen credit card was found in the possession of respondent on October 10, 1994, after respondent used it to obtain merchandise, totaling at least $3,500.00, by forging the resident's signature in credit card transactions.

4. On February 17, 1995, respondent, a/k/a Ruby Denise Swanigan, was convicted in Milwaukee County Circuit Court of two counts of felony theft by fraud and one count of misdemeanor attempted theft by fraud, in violation of s. 939.32 and 943.20 (1) (a) and (d), Stats. Respondent was sentenced to the House of Corrections for 9 months on each felony count and 4½ months on the misdemeanor count. Sentence was stayed and respondent was placed on probation for 2 years on each count, concurrent.

5. During the course of the criminal investigation which resulted in respondent's conviction, respondent admitted to police officers that she had been using cocaine since 1987 and that she had been in drug treatment programs on four occasions.

6. Respondent did not file an Answer to the Complaint filed in this matter, and did not appear at the hearing held in this matter.

## CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to s. 441.07, Stats., and s. N 7.04, Wis. Adm. Code.

2. Respondent, by having been convicted of the crimes of theft by fraud and attempted theft by fraud the circumstances of which substantially relate to the practice of professional nursing, violated s. 441.07 (1) (b) and (d), Stats., and s. N 7.04 (1) and (15), Wis. Adm. Code.

3. Respondent, by consuming controlled substances, as described in Findings of Fact # 5 herein, engaged in conduct in violation of s. 441.07 (1) (b), (c) and (d), Stats., and s. N 7.04 (1), (2) and (15), Wis. Adm. Code.

4. By failing to file an Answer to the Complaint and failing to appear at the hearing held in this matter, respondent is in default under s. RL 2.14 Wis. Adm. Code.

## ORDER

**NOW, THEREFORE, IT IS ORDERED** that the license of Ruby Swanigan Dukes (#112153) to practice as a registered nurse be, and hereby is, revoked.

**IT IS FURTHER ORDERED** that pursuant to s. 440.22, 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 it is signed by a designee of the Board of Nursing.

## OPINION

This matter was commenced by the filing of a Notice of Hearing and Complaint on May 16, 1996. A hearing was held on June 25, 1996. Atty. James W Harris appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Ms. Dukes did not file an Answer to the Complaint and did not appear at the hearing.

By failing to file an Answer to the Complaint and failing to appear at the hearing held in this matter, Ms. Dukes is in default under s. RL 2.14 Wis. Adm. Code. Therefore, the Board of Nursing may make findings and enter an order on the basis of the Complaint and other evidence.

The evidence presented in this case establishes that by having been convicted of the crimes of theft by fraud and attempted theft by fraud on February 17, 1995, Ms. Dukes violated s. 441.07 (1) (b) and (d), Stats., and s. N 7.04 (1) and (15), Wis. Adm. Code.

Ms. Dukes' conviction is based, in part, upon her admission that she used a Visa credit card, stolen from a 90-year-old resident of the nursing home where she was employed, to purchase at least $3,500.00 worth of merchandise from numerous business establishments in Milwaukee during a shopping spree in October, 1994. She was arrested on October 11, 1994, after a failed attempt to use the stolen credit card to purchase merchandise from the jewelry department at J.C. Penny's in Milwaukee. She told the investigating police officers that she obtained the card from another individual who had a "stack of charge card". Ms. Dukes stated that she called the VISA 800 number to obtain the limit and balance on the card, and that she was told that there was no balance on the card and that the credit limit was $7,000. *Exhibit #1; Affidavit of Detective Alan Johnson.*

Section 111.321 and 111.322, Stats., prohibit a licensing agency from discriminating against an individual on the basis of a conviction record. Section 111.335 (1) (c), Stats., provides that notwithstanding s. 111.322, it is not discrimination because of conviction record to terminate from licensing any individual who has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the licensed activity.

The purpose of the exception structured by the Legislature in s. 111.335 (1) (c), Stats., was discussed by the Wisconsin Supreme Court in *County of Milwaukee v. Labor and Industry Review Commission*, 139 Wis. 2d 805, 407 N.W. 2d 908 (1987). Although the Court's discussion focused on the employment area, the societal interests discussed are relevant to the licensing area. The Court stated, Id. at 821, that:

> It is evident that the legislature sought to balance at least two interests. On the one hand, society has an interest in rehabilitating one who has been convicted of crime and protecting him or her from being discriminated against in the area of employment. Employment is an integral part of the rehabilitation process. On the other hand, society has an interest in protecting its citizens. There is a concern that individuals, and the community at large, not bear an unreasonable risk that a convicted person, being placed in an employment situation offering temptations or opportunities for criminal activity similar to those present in the crimes for which he had been previously convicted, will commit another similar crime. This concern is legitimate since it is necessarily based on the well-documented phenomenon of recidivism.

In reference to assessing the risk of recidivism, the Supreme Court stated, Id. at 823-824, that:

> In balancing the competing interests, and structuring the exception, the legislature has had to determine how to assess when the risk of recidivism becomes too great to ask the citizenry to bear. The test is when the circumstances, of the offense and the particular job, are substantially related. . .
>
> Assessing whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. ...
>
> It is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person.

In this case, Ms. Dukes would have ample opportunity to commit crimes similar to the ones for which she was convicted. As a registered nurse, she would have easy access to personal assets belonging to patients as well assets of nursing homes and health care facilities. In reference to character traits, her conduct as evidenced by her conviction for theft reflects that she is dishonest and untrustworthy.

Having found that Ms. Dukes engaged in unprofessional conduct, 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 engaged in unprofessional conduct.

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 Administrative Law Judge recommends that Ms. Dukes' license to practice as a registered nurse be revoked. This measure is designed primarily to assure protection of the public and to deter other licensees from engaging in similar misconduct.

Public trust is essential to the practice of professional nursing. Ms. Dukes has shown by her conduct that she is dishonest and untrustworthy and that she is incapable of practicing in a manner which safeguards the interest of the public. At this time, revocation of her license is the only viable measure available to assure protection of the public and to deter other licensees from engaging in similar misconduct. In the future, Ms. Dukes may seek reinstatement of her license upon submission of satisfactory evidence to the Board of successful rehabilitation.

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 20th day of November, 1996.

Respectfully submitted,

Ruby Jefferson-Moore

Ruby Jefferson-Moore
Administrative Law Judge

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE BOARD OF NURSING

In the Matter of the Disciplinary Proceedings Against

Ruby Swanigan Dukes, R.N.,

Respondent.

AFFIDAVIT OF MAILING

STATE OF WISCONSIN )
)
COUNTY OF DANE )

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On January 10, 1997, I served the Final Decision and Order dated January 9, 1997, LS9605152NUR, upon the Respondent Ruby Swanigan Dukes, R.N. by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 213 340 384.

3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

Ruby Swanigan Dukes, R.N.
3731 West North Avenue
Milwaukee WI 53208

Kate Rotenberg

Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me
this 10th day of January 1997.

Notary Public, State of Wisconsin
My commission is permanent.

# 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.**

**Serve Petition for Rehearing or Judicial Review on:**

STATE OF WISCONSIN BOARD OF NURSING
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

**The Date of Mailing this Decision is:**

January 10, 1997

## 1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

## 2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)