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FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JAMES DEE NOBLE, R.N.,
RESPONDENT

FINAL DECISION
AND ORDER

ORDER 0001796

The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Hearing Examiner, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Hearing Examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Board of Nursing. Let a copy of this order be served on the respondent by certified mail.

A party aggrieved by this decision may petition the board for rehearing within twenty (20) days after service of this decision pursuant to Wis. Stats. sec. 227.12. The party to be named as respondent in the petition is James Dee Noble.

A party aggrieved by this decision may also petition for judicial review by filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings will be held and serving the board and other parties with a copy of the petition for judicial review within thirty (30) days after service of this decision pursuant to Wis. Stats. sec. 227.16. The party to be named as respondent in the petition is the State of Wisconsin, Board of Nursing.

Dated this 19th day of November, 1982.

Marjorie Lundquist RN

pc017-552

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :

JAMES DEE NOBLE, R.N., :
RESPONDENT :

PROPOSED DECISION

The parties to this proceeding for the purposes of Wis. Stats. sec. 227.16 are:

James Dee Noble
2905 Winsor Drive, #6
Eau Claire, Wisconsin 54701
-and-
10710 Newton Avenue
Kansas City, Missouri 64134

Board of Nursing
1400 East Washington Avenue, Room 174
P.O. Box 8936
Madison, Wisconsin 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue, Room 183
P.O. Box 8936
Madison, Wisconsin 53708

A Complaint was filed in the above-captioned matter on July 15, 1982. No Answer to the Complaint was filed by the respondent, James Dee Noble.

A hearing was held on September 27, 1982 commencing at 10:00 a.m. in Room 180, 1400 East Washington Avenue, Madison, Wisconsin. The complainant appeared by attorney Michael J. Berndt, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, Room 183, P.O. Box 8936, Madison, Wisconsin 53708. The respondent was not present, nor was anyone present to represent him.

Based upon the record, the Hearing Examiner recommends that the Board of Nursing adopt as its final decision the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. James Dee Noble (Noble) was at all times material to this proceeding licensed under the provisions of Chapter 441, Wisconsin Statutes, to practice as a registered nurse in the State of Wisconsin.

2. Noble's registered nurse license is #78145 and was issued on January 9, 1981.

3. Noble's last address formally reported to the Board of Nursing is 2905 Winsor Drive, #6, Eau Claire, Wisconsin 54701. The Board has received information from Noble and others indicating that Noble's address is 10710 Newton Avenue, Kansas City, Missouri 64134.

4. Service of the Notice of Hearing and Complaint in this matter was made by certified mail to respondent at both addresses stated in paragraph 3 above, on July 15, 1982. The Notice of Hearing and Complaint mailed to the Eau Claire, Wisconsin address was returned, with the envelope being stamped: "RETURN TO WRITER--NOT DELIVERABLE AS ADDRESSED--NO FORWARDING ORDER ON FILE". The Notice of Hearing and Complaint mailed to the Kansas City, Missouri address was delivered to "Lillie Noble" on July 19, 1982, as reflected upon the return receipt.

5. On or about July 1, 1982, Noble mailed his pocket card as a registered nurse in the State of Wisconsin to the Department of Regulation and Licensing, Board of Nursing, along with an enclosed typed note, which read:

"To Whom It May Concern:

I am returning my license as I no longer wish to practice as a registered nurse.

(signed) James D. Noble"

The envelope containing the aforementioned pocket card and typed note indicated a return address of:

"James D. Noble
10710 Newton Avenue
Kansas City, MO 64134"

6. Noble did not file an Answer to the Complaint nor appear at the hearing held on September 27, 1982.

7. On June 10, 1982, Noble's license to practice professional nursing in the State of Kansas was revoked by the Kansas State Board of Nursing.

8. The action of the Kansas State Board of Nursing in revoking Noble's license was based upon Noble's having engaged in an act of unprofessional conduct by violating the provisions of K.S.A. 65-1120(a)(6) in failing to correctly document University of Kansas Medical Center records and having removed Demerol from that facility without authority. In support of this violation the Kansas State Board of Nursing found that Noble, while employed at the University of Kansas Medical Center on December 5, 6, and 21, 1981, failed to document injections of Demerol to patients and wasted Demerol injections without witnesses.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this proceeding pursuant to Wis. Stats. sec. 441.07.

2. Noble did not file an Answer to the Complaint as required by Wis. Adm. Code sec. RL 2.09, nor appear at the hearing, and is therefore in default pursuant to Wis. Adm. Code sec. RL 2.14.

3. Having a nursing license revoked by the State of Kansas constitutes moral delinquency and unprofessional conduct under Wis. Adm. Code secs. N 11.03(3)(d) and N 11.04(1), respectively, thereby authorizing the Board of Nursing to take disciplinary action under Wis. Stats. sec. 441.07.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of JAMES DEE NOBLE to practice as a registered nurse (#78145) in the State of Wisconsin, shall be and hereby is REVOKED, effective ten days following the date of the final decision of the Board of Nursing.

OPINION

The license of James Dee Noble to practice as a professional nurse in the State of Kansas was revoked by the Kansas State Board of Nursing on June 10, 1982. Kansas' action was based upon a finding that Mr. Noble had violated the provisions of K.S.A. 65-1120(a)(6) by failing to correctly document University of Kansas Medical Center records and by removing Demerol from that facility without authority. More specifically, Mr. Noble was found to have failed to document injections of Demerol to patients and have wasted Demerol injections without witnesses while employed at the University of Kansas Medical Center on December 5, 6, and 21, 1981.

An initial matter which should be discussed, although not formally raised by respondent since he did not make an appearance in this proceeding, is whether or not the action of Mr. Noble in mailing his pocket card as a registered nurse to the Board of Nursing constitutes a voluntary surrender of license depriving the board of jurisdiction in this case. In this regard it should be noted that the statutes of the Board of Nursing have no provision which permits the "voluntary surrender" of a license, unlike that of, for example, the State of Wisconsin Medical Examining Board. See, Wis. Stats. sec. 448.02(5). Furthermore, Mr. Noble's unprofessional conduct arose at a time when he was, clearly, licensed by this board. It is the examiner's opinion that the Board of Nursing cannot be deprived of its statutory responsibility to protect the public and deter other licensees from engaging in similar conduct by the unilateral action of Mr. Noble in forwarding his pocket card to the board.

The remaining issue in this case is the appropriate discipline, if any, to be levied by the Wisconsin Board of Nursing due to the disciplinary action taken against Mr. Noble's nursing license in Kansas. The serious nature of Mr. Noble's conduct in Kansas requires that discipline be imposed in the public interest.

Great weight should be given the decision of the Kansas board in determining the sanction appropriate in this proceeding. This is due to the Kansas board's close proximity to the conduct of Mr. Noble which constitutes the underlying facts in this proceeding. The state's attorney recommended that Mr. Noble's license be revoked by the Wisconsin Board of

Nursing in view of the revocation ordered by the Kansas board. Wis. Stats. sec. 441.07(2) provides as follows:

"A certificate or license revoked may, after one year, upon application be reinstated by the board."

The foregoing statute, as applied to a revocation of Mr. Noble's license, would act to prohibit him from practicing nursing in this state for a period of at least one year. It would further permit Mr. Noble to apply for reinstatement at the end of that year, at which time the board could assess his current rehabilitation and ability to practice in the best interests of the public.

Mr. Noble's failure to appear in this proceeding has severely restricted the board's ability to ascertain whether or not there exist sufficient mitigating circumstances involving Mr. Noble's violation of the Kansas licensing laws which would warrant a lesser discipline than revocation. Accordingly, a revocation is recommended in this case in view of the action taken by the Kansas board and the need for this board to acquire further information in the public interest prior to permitting Mr. Noble to again practice in this state.

Dated at Madison, Wisconsin this 29th day of September, 1982.

Respectfully submitted,



Donald R. Ritter
Hearing Examiner

DRR:lb
374-367