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1985
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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :

JACK ROBERT HERKOWSKI, R.N. :
RESPONDENT. :

FINAL DECISION
AND ORDER

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

Jack Robert Herkowski
2479 S. Chase Ave.
Milwaukee, WI 53207

Board of Nursing
P.O. Box 8936
Madison, Wisconsin 53708-8936

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8936
Madison, Wisconsin 53708-8936

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 petition in this instance would be captioned with Jack Robert Herkowski as the respondent.

A party aggrieved by this decision who is a resident of this state 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 party aggrieved resides within thirty (30) days after service of this decision. A party aggrieved by this decision who is not a resident of this state must file the petition for judicial review in the office of the clerk of circuit court for Dane County. A party aggrieved must also serve 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 Board of Nursing.

The parties in this matter agree to the terms and conditions of the attached stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. That Jack Robert Herkowski, hereinafter called the respondent, held a license as a registered nurse at all times relevant to this complaint.
2. That the respondent's registered nurse license is #71106, issued on September 29, 1978.
3. That the respondent's address is 2479 S. Chase Ave., Milwaukee, WI 53207.
4. That on May 16, 1984, the Oregon State Board of Nursing suspended the respondent's Oregon nursing license for a period of six months, said suspension to be followed by a two-year period of probation.
5. That attached as Exhibit A is a copy of the Findings of Fact, Conclusions of Law and Order of the State of Oregon Board of Nursing. An Amended Findings of Fact, Conclusions of Law and Order, Clarifying Terms of Probation is attached as Exhibit B.
6. That the respondent has not commenced his period of Probation under the Oregon Order.
7. That the respondent has not practiced as a nurse in the State of Wisconsin since being suspended by the State of Oregon Board of Nursing.

CONCLUSIONS OF LAW

1. That by having his State of Oregon Board of Nursing registered nurse license suspended as set forth above, the respondent has had disciplinary action taken against a license in another state, contrary to Wis. Adm. Code sec. N 11.03(3)(d) which constitutes unprofessional conduct as defined by Wis. Adm. Code sec. N 11.04(1).
2. That the board has jurisdiction to take disciplinary action for violations of board rules and unprofessional conduct pursuant to sec. 441.07, Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the registered nurse license of Jack Robert Herkowski, the respondent, is hereby suspended for an indefinite period of not less than one year from the date of this order, to be reinstated upon evidence satisfactory to the board that he is physically and psychologically capable of safely practicing as a registered nurse. Such evidence shall at a minimum consist of the following:

1. A petition from the respondent indicating why he is seeking the reinstatement of his license and while he feels capable of returning to practice as a nurse;
2. A report from the respondent's primary counselor at a drug program approved by the board addressing the respondent's compliance with and progress in a rehabilitation program, and indicating that the respondent

has not had any drug relapses since the date of this order. The report must also address whether continued counselling or therapy is recommended;

3. A report from a physician or a psychiatrist who has examined the respondent at a time proximate to the date of the petition for reinstatement, indicating the respondent has no health problems, including drug or alcohol dependency or any mental or emotional disorders which would prevent him from safely and competently practicing as a registered nurse. In addition, the report must identify whether any continued counselling or therapy is recommended and should identify any prescribed drugs being taken by the respondent and the effect of each drug on the respondent's behavior; and,

4. A letter from the respondent's current employer, if the respondent is then employed in any capacity, evaluating the respondent's work performance.

IT IS FURTHER ORDERED that if the respondent is reinstated, he shall be issued a limited license for a period of two years under terms and conditions as deemed appropriate by the board.

BOARD OF NURSING

By


A Member of the Board

7/19/85
Date

MJB:cls
370-150

BEFORE THE BOARD OF NURSING
OF THE STATE OF OREGON

In the Matter of
JACK HERKOWSKI, R.N.
License No. 83-042554

) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
) AND ORDER

DATE: 5-18-84

I CERTIFY THIS TO BE A
TRUE COPY OF THE RECORDS
ON FILE WITH THE OREGON
BOARD OF NURSING

SIGNED: [Signature]

This matter was considered by the Board, meeting in Portland, Oregon on March 21, 1984. The licensee, Jack Herkowski, did not appear personally. The state appeared through Mary Amdall-Thompson, Assistant Executive Director in Nursing Practice. The purpose of the hearing was to determine whether the allegations contained in the statement of charges are true and whether action should be taken with respect to Jack Herkowski's license to practice as a R.N. in the State of Oregon.

I

FINDINGS OF FACT

Based on the evidence submitted through stipulation and testimony presented, the Board finds the following:

1.1 That Jack Herkowski, is licensed to practice as a R.N. in the State of Oregon.

1.2 That sufficient evidence upon which a finding of habitual intemperance in the use of, or addiction to, habit-forming or dangerous drugs was presented during the hearing. Respondent took from his employer, Bay Area Hospital, Coos Bay, Oregon an unauthorized controlled substance, Sublimaze, for his personal use. This occurred from late December 1983 through February 1984.

1.3 That sufficient evidence upon which a finding that Jack Herkowski engaged in acts that are considered to be a serious danger to the public health and safety and not considered acceptable standards of good nursing practice by law or custom.

a) Respondent self-injected with Sublimaze while on duty and thereby was working under the influence of the drug.

Exhibit A

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Board makes the following conclusions of law:

2.1 That the Board has jurisdiction over the licensee, Jack Herkowski, and over the subject matter of this proceeding.

2.2 That the theft of controlled substances from Bay Area Hospital, Coos Bay, Oregon, during late December 1983 through early February 1984, and its use, is grounds for suspension or revocation of the license of Jack Herkowski, pursuant to ORS 678.111 (1) as follows:

- (1) Issuance of the license to practice nursing of any person may be refused or the license may be revoked or suspended or the licensee may be placed on probation for a period specified by the board and subject to such condition as the board may impose or may be issued a limited license or may be reprimanded or censured by the board, for any of or the following reasons:

- (e) Use of any controlled substance or intoxicating liquor to an extent or in a manner dangerous or injurious to the licensee or others using the substance, or to an extent that such use impairs the ability to conduct safely the practice for which the licensee is licensed.
- (f) Conduct derogatory to the standards of nursing.

- (g) Violation of any provision of ORS 678.010 to 678.455 or rules adopted thereunder.

OAR 851-30-156 violations: The standards of good nursing practice by law or custom.

- a(2) The nurse shall not violate any law or duly promulgated rule or regulation intended to guide the conduct of a nurse nor shall the nurse aid, abet, or assist any other person to violate or circumvent such a law, rule, or regulation.

- (4) The nurse shall not take equipment, materials, property, drugs, or medicine from an employer or patients without prior knowledgeable

authorization nor does the nurse solicit or borrow money, materials or property from patient.

- (5) The nurse shall not obtain, possess, furnish, dispose of, or administer prescription or illegal drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs.

III

ORDER

Based on the foregoing findings of fact, conclusions of law, and the Board being fully advised, it is hereby ordered that Jack Herkowski's license to practice Registered Nursing in the State of Oregon is hereby suspended for six months and at the end of the suspension period, he is to serve a probation time of two years, while employed in nursing.

DATED, this 16th day of May 1984 :

Patricia Oliver-Lane
Patricia Oliver-Lane, R.N.
President
Oregon State Board of Nursing

(Copy)

BEFORE THE BOARD OF NURSING
OF THE STATE OF OREGON

In the Matter of
JACK HERKOWSKI, R.N.
License No. 83-042554

) AMENDED FINDINGS OF FACT,
) CONCLUSIONS OF LAW
) AND ORDER, CLARIFYING TERMS OF PROBATION

This matter was considered by the Board, meeting in Ashland, Oregon on September 19, 1984. The licensee, Jack Herkowski, did not appear personally. The state appeared through Mary Amdall-Thompson, Assistant Executive Director in Nursing Practice. The purpose of the hearing was to determine whether the allegations contained in the statement of charges are true and whether action should be taken with respect to Jack Herkowski's license to practice as a R.N. in the State of Oregon.

I

FINDINGS OF FACT

Based on the evidence submitted through testimony presented, the Board finds the following:

1.1 That Jack Herkowski, is licensed to practice as a R.N. in the State of Oregon.

1.2 That sufficient evidence upon which a finding of habitual intemperance in the use of, or addiction to, habit-forming or dangerous drugs was presented during the hearing. Respondent took from his employer, Bay Area Hospital, Coos Bay, Oregon an unauthorized controlled substance, Sublimaze, for his personal use. This occurred from late December 1983 through February 1984.

1.3 That sufficient evidence upon which a finding that Jack Herkowski engaged in acts that are considered to be a serious danger to the public health and safety and not considered acceptable standards of good nursing practice by law or custom.

a) Respondent self-injected with Sublimaze while on duty and thereby was working under the influence of the drug.

DATE: 10-5-84

I CERTIFY THIS TO BE A
TRUE COPY OF THE RECORDS
ON FILE WITH THE OREGON
BOARD OF NURSING.

SIGNED: B. W. Mason

Exhibit B

II

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Board makes the following conclusions of law:

2.1 That the Board has jurisdiction over the licensee, Jack Herkowski, and over the subject matter of this proceeding.

2.2 That the theft of controlled substances from Bay Area Hospital, Coos Bay, Oregon during late December 1983 through early February 1984, and its use, is grounds for suspension or revocation of the license of Jack Herkowski, pursuant to ORS 678.111 (1), as follows:

"Issuance of the license to practice nursing of any person may be refused or the license may be revoked or suspended or the licensee may be placed on probation for a period specified by the board and subject to such condition as the board may impose; or may be issued a limited license or may be reprimanded or censured by the board, for any of the following reasons: (b) Use of any controlled substance or intoxicating liquor to an extent or in a manner dangerous or injurious to the licensee or others or to an extent that such use impairs the ability to conduct safely the practice for which the licensee is licensed, in his employer, Bay Area Hospital, Coos Bay, Oregon

f) Conduct derogatory to the standards of nursing.

g) Violation of any provision of ORS 678.010 to 678.455 or rules adopted thereunder."

ORAR 851-30-156 violations:

2) The nurse shall not violate any law or duly promulgated rule or regulation intended to guide the conduct of a nurse nor shall the nurse aid, abet, or assist any other person to violate or circumvent such a law, rule, or regulation.

4) The nurse shall not take equipment, materials, property, drugs, or medicine from an employer or patients without prior knowledgeable authorization nor

does the nurse solicit or borrow money, materials or property from patient.

5) The nurse shall not obtain, possess, furnish, dispose of, or administer prescription or illegal drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs.

III

ORDER

Based on the foregoing findings of fact, conclusions of law, and the Board being fully advised, it is hereby order that Jack Herkowski's license to practice Registered Nursing in the State of Oregon is hereby suspended for six months and at the end of the suspension period, he is to serve a probation time of two years, while employed in nursing.

Terms and conditions of probation are as follows:

1. Respondent shall not violate ORS 678 or the rules adopted thereon.
2. Respondent agrees to notify the Board in writing of any changes in address or employment during probationary period.
3. Respondent agrees to report to the Board of Nursing in writing every three months during probationary period: the licensee shall report on to or by report
4. Respondent agrees to participate in psychotherapy, written confirmation required within 30 days of Board Order; a report will be sent to the Board on completion of suspension and progress reports submitted every three months during probationary period.
5. Respondent shall only practice in a nurse setting where the supervisor will agree to submit written evaluations of work performance to the Board every three months; if employed in a setting where there is a Director of Nursing Service, the Director of Nursing Service is to be informed.

DATED, this _____ day of September 1984:

NUNC PRO TUNC

May 16, 1984

Kay L. Schweickart, R.N.

President

Oregon State Board of Nursing

ORDER - Jack Herkowski, R.N.

BEFORE THE STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

STIPULATION

JACK ROBERT HERKOWSKI, R.N., :
RESPONDENT. :


The parties in this matter agree and stipulate as follows:

1. That the respondent understands by signing this Stipulation that he voluntarily and knowingly waives his rights in this matter, including the right to a hearing on the allegations against him, at which time the state has the burden of proving the allegations by clear, satisfactory and convincing evidence, the right to confront and cross-examine the witnesses against him, the right to call witnesses on his own behalf and to compel their attendance by subpoena, the right to testify in his own behalf, 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 him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

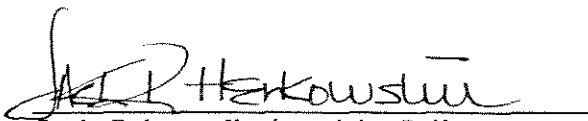
2. The respondent and the complainant urge the Board of Nursing to adopt the Final Decision and Order in this matter.

3. If the terms of this Stipulation are not acceptable to the Board, then neither of the parties shall be bound by any of the terms.

4. The respondent's current licensure card is attached to this Stipulation.


Michael J. Berndt, Attorney
Division of Enforcement

5/28/85
Date


Jack Robert Herkowski, R.N.
Respondent

7/10/85
Date

MJB:cls
370-143