

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

DEREK W. OLSEN, L.P.N.,
RESPONDENT.

FINAL DECISION AND ORDER
93 NUR 157
LS 9405111 NUR

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Derek W. Olsen, L.P.N.
1565 W. River Road
Stevens Point, WI 54481

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

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision 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 Derek W. Olsen, L.P.N., Respondent, date of birth September 13, 1947, is licensed as a licensed practical nurse in the State of Wisconsin pursuant to license number 31162, which was granted January 23, 1992.
2. That Respondent's last address reported to the Department of Regulation and Licensing is 1565 W. River Drive, Stevens Point, Wisconsin 54481.

COUNT I

3. That on March 21, 1978, Respondent was charged by an Information in the Superior Court of the State of California in and for the County of

*unpaid
revoke
failure to submit
child substitution
w/decree w/ ch*

Sacramento, Case number 52985 with four counts of violating section 288 of the Penal Code of California, for committing lewd and lascivious acts upon and with a girl ten years of age, and one count of violating section 647a of the Penal Code of California, for molesting a girl seven years of age.

4. That on April 17, 1978, pursuant to a plea agreement in case number 52985, Respondent pled guilty to one count of violating section 288, and the other four counts in that action were dismissed. Based upon his plea of guilty, on April 17, 1978, Respondent was convicted in the state of California of the felony criminal offense of child molestation, and was placed on four years of probation.

5. That Respondent successfully completed the probation ordered in case number 52985 and on August 19, 1982, the California Court issued a dismissal order, pursuant to section 1203.4 of the California Penal Code. That section of the California law provides that a plea of not guilty is entered, that the verdict of guilty is set aside, and that the accusatory pleading is dismissed.

6. That section 1203.4 of the California Penal Code also provides, and the Dismissal Order stated on its face:

This Order does not relieve subject of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by state or local agency.

7. That on August 29, 1991, Respondent completed and signed an application for a license as a licensed practical nurse in the state of Wisconsin. Respondent sent that application to the Wisconsin Department of Regulation and Licensing, Bureau of Health Service Professions, which processes applications for licenses on behalf of the Wisconsin Board of Nursing.

8. That question number 16 on the application for a license as a licensed practical nurse in the state of Wisconsin asked whether Respondent had ever been convicted of a crime. Respondent answered "No" to that question.

9. That the Wisconsin Board of Nursing granted Respondent a license as a licensed practical nurse based upon Respondent's answers on the August 29, 1991 application.

COUNT II

10. That section 288 of the California Penal Code, child molestation, is a law substantially related to the practice of practical nursing.

COUNT III

11. That on May 7, 1992 Respondent was indicted by a Grand Jury in Medina County, Texas. which indictment was filed in the District Court for Medina County, Texas as cause number 92-05-6874CR. The indictment was for Indecency With A Child By Contact on or about April 12, 1992, a second degree felony.

12. That on May 7, 1992 Respondent was indicted by a Grand Jury in Medina County, Texas, which second indictment was filed in the District Court for Medina County, Texas as cause number 92-05-6875CR. The indictment was for Indecency With A Child By Exposure on or about April 12, 1992, a third degree felony.

13. That on September 8, 1992 Respondent entered a plea of Nolo Contendere, in Medina County Texas District Court cause number 92-05-6874-CR, to the charge of Indecency with a Child by Contact, a second degree felony. The written plea memorandum signed by Respondent that day includes the following language:

"VOLUNTARINESS OF PLEA OF NO CONTEST: I am entering my plea freely and voluntarily, and only because I am guilty of the offense alleged against me. Because after reviewing the facts and evidence in the case and visiting with counsel, I have determined it is in my best interest to enter a plea of no contest in this case."

14. That the written plea memorandum signed by Respondent in Medina County Texas District Court cause number 92-05-6874-CR that day also includes the following handwritten notation at the top of the first page:

"5 yr Def.
1000
Probation Wisc"

15. That as part of the plea agreement on September 8, 1992 the district attorney moved that cause number 92-05-6875CR, Indecency With A Child By Exposure, be dismissed because of the action taken in cause number 92-05-6874CR. Based upon that motion, the court dismissed that cause of action that date.

16. That in cause number 92-05-6874CR, the judge then placed Respondent on probation for a period of five years, fined Respondent \$1,000.00, imposed costs, and deferred further proceedings without entering an adjudication of guilt, as allowed by the Texas Code of Criminal Procedure.

17. That on September 8, 1992, the same day that he entered his plea and was placed on probation in the Texas criminal matter Respondent completed an application to the Texas authorities for transfer of his probation to Wisconsin under the Interstate Compact for the Supervision of Probationers and Parolees.

18. That on October 3, 1992, 25 days after being placed on probation in Texas, Respondent moved to Stevens Point, Wisconsin with the permission of the Texas authorities.

19. That on December 1, 1992 Respondent obtained employment as a L.P.N., with a home health care provider in Wisconsin and worked in that position providing home health care to a child until March 19, 1993. Respondent did not inform his employer of his criminal history.

20. That on March 22, 1993, almost six months after allowing Respondent to move to Wisconsin, the Texas authorities completed the necessary transfer document under the interstate compact. It was sent to the Wisconsin Department of Corrections, where it was received on April 21, 1993. This was the first notification to Wisconsin authorities that Respondent had moved to Wisconsin and was on probation in Texas for a sexual offense against a child.

21. That the Wisconsin Department of Corrections undertook an investigation to determine if Wisconsin should accept the transfer of Respondent's probation under the interstate compact. The Department of Corrections determined that because there was an inadequate rehabilitation plan that they would not accept supervision of Respondent's probation.

22. That on June 23, 1993, the Wisconsin Department of Corrections advised the Texas probation officer that Wisconsin would not accept supervision of Respondent. The Texas probation officer stated that Texas would allow Respondent to remain in Wisconsin and would supervise his probation on a monthly basis by mail.

23. The Wisconsin Department of Corrections objected to the State of Texas' planned mail supervision and Respondent moved from Wisconsin and is now residing in Hondo, Texas.

24. That the Texas Penal Code felony offense Indecency With A Child By Contact is a law substantially related to the practice of practical nursing.

25. That on June 20, 1994, the Medina County Texas District Court ordered that the community supervision be terminated and all charges against the Defendant in Case No. 92-05-6874 be dismissed based upon the Respondent having satisfactorily fulfilled the conditions of his community supervision over one-third of the original probation period.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to sec. 441.07, Wis. Stats.

2. The Wisconsin Board of Nursing has authority to enter into this stipulated resolution of this matter pursuant to sec. 227.44(5), Wis. Stats.

3. That Respondent's August 29, 1991 fraudulent answer to the application question asking whether he had ever been convicted of a crime was fraud in the procuring of his license, which subjects Respondent to discipline pursuant to sec. 441.07(1)(a), Stats.

4. That Respondent having violated section 288 of the California Penal Code, child molestation, as evidenced by his conviction in case number 52985, subjects Respondent to discipline pursuant to sec. 441.07(1)(b) and (d) and Wis. Adm. Code sec. N 7.04(1).

5. That Respondent having violated the Texas Penal Code felony offense Indecency With A Child By Contact, as evidenced by his plea and probation in cause number 92-05-6874CR, subjects Respondent to discipline pursuant to sec. 441.07(1)(b) and (d) and Wis. Adm. Code sec. N 7.04(1).


REV

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Derek W. Olsen's license as a licensed practical nurse in the state of Wisconsin is hereby revoked, effective immediately.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin this 16th day of September, 1994.


Jacqueline Johnsrud, R.N.
Chairperson
Wisconsin Board of Nursing

ATY2-5945

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
	:	
DEREK W. OLSEN, L.P.N.,	:	LS-9405111-NUR
RESPONDENT.	:	93 NUR 157

It is hereby stipulated and agreed, by and between, Derek W. Olsen, L.P.N., Respondent; and, John R. Zwieg, as attorney for the Wisconsin Department of Regulation and Licensing, Division of Enforcement, as follows:

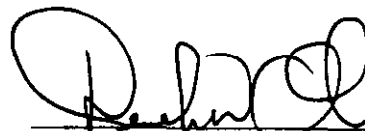
1. On May 11, 1994, a disciplinary complaint was filed in this matter.
2. The parties agree that this stipulated resolution may be presented directly to the Board and need not be presented to the Administrative Law Judge appointed in this matter.
3. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving the allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; 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.
4. Respondent is aware of his right to seek legal representation, and has done so, prior to signing this Stipulation.
5. Respondent, for personal reasons, agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.
6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

7. Attached to this stipulation are Respondent's current wall and wallet registration certificates.

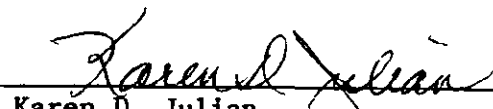
8. The parties to this Stipulation agree that the Respondent and the attorney for the Division of Enforcement may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the Stipulation.

9. The parties to this Stipulation agree that the member of the Board appointed as the investigative advisor in this matter may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the Stipulation.

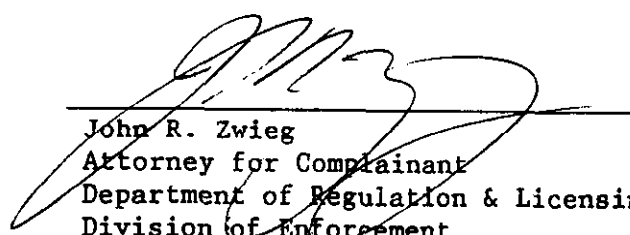
Dated this 15 day of July, 1994.


Derek W. Olsen, L.P.N.
Respondent

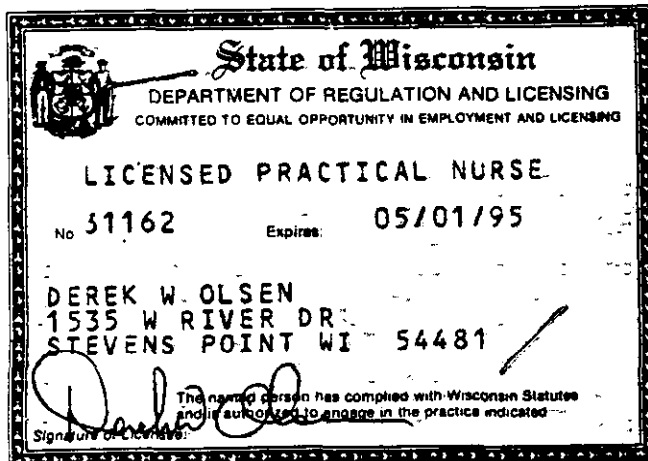
Dated this 18 day of July, 1994.


Karen D. Julian
Julian, Musial, Wettersten & Friedrich
Attorneys for Respondent

Dated this 11th day of July, 1994.


John R. Zwieg
Attorney for Complainant
Department of Regulation & Licensing
Division of Enforcement

ATY2-5944



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:

THE STATE OF WISCONSIN BOARD OF NURSING.

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

SEPTEMBER 20, 1994.

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.)