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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

BETH E. RATA CZAK, R.N.
Applicant

FINAL DECISION AND ORDER
LS0003031NUR

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

Beth E. Rataczak, R.N.
827½ East Cook Street
Portage, WI 53901

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

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

The above-captioned matter was commenced by the filing of a Notice of Hearing on March 3, 2000. A hearing was held in the matter on May 23-24, 2000. Atty. John R. Zwieg appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Atty. Daniel R. Einum, Cassidy and Einum Law Office, appeared on behalf of the respondent. The hearing transcript was filed on June 14, 2000, and closing arguments were filed by the parties on or before August 1, 2000.

The Administrative Law Judge filed her Proposed Decision with the board on October 31, 2000; Mr. Zwieg filed Complainant's Objections to the Proposed Decision on November 1, 2000; and Mr. Einum filed respondent's Response to Complainant's Objections to Proposed Decision on November 22, 2000. The board considered the matter on January 5, 2001.

Based upon the entire record herein, the Board of Nursing adopts as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Beth E. Rataczak, RN., (d.o.b. 09/30/48), is licensed as a registered nurse in the State of Wisconsin. This license, #59424, was first granted on February 25, 1974.

2. Respondent's most recent address on file with the Department of Regulation and Licensing is 827½ East Cook Street, Portage, Wisconsin 53901.

3. From August 4, 1986, until her resignation on December 10, 1998, respondent was employed by the State of Wisconsin Department of Corrections ("DOC") as a registered nurse in the Health Services Unit ("HSU") at the Columbia Correctional Institution ("CCI"), a maximum security prison in Portage, Wisconsin.

4. During her period of employment at the DOC, Ms. Rataczak signed statements acknowledging that she had received and reviewed copies of the DOC's Executive Directive 16, Fraternization Policy. The January, 1997 revision of the May 1991 Fraternization Policy states, in part, that employees of the DOC may not have relationships with inmates.

5. At least from May, 1998 to December 10, 1998, Ms. Rataczak provided nursing care to inmate DF, a male inmate incarcerated at CCI, while he was in the HSU. Respondent did not know DF until he was transferred to CCI from another Wisconsin correctional institution.

6. Inmate DF has been incarcerated in Wisconsin correctional institutions at least since September, 1989, and was incarcerated at CCI from 1992 to December, 1998.

7. Beginning in May, 1998, Ms. Rataczak and inmate DF established a personal relationship. They saw each other when respondent was supposed to be providing nursing services to DF; when DF was picking up or delivering mail to HSU, and when they were attending committee meetings at which both were required to be present.

8. During the time period between May, 1998, and December, 1998, respondent and inmate DF surreptitiously exchanged the following items in the CCI:

- a. Inmate DF gave respondent a teddy bear, a ring and a yarn bracelet, which respondent accepted.
- b. Inmate DF gave respondent one of his shirts, which respondent accepted and wore.
- c. Respondent gave inmate DF letters, cards, photos, a pin with beads, coffee and gum.
- d. Respondent purchased a leather jacket for DF, but DF never received it.

9. From May, 1998, to December, 1998, respondent had direct, personal relationships with inmate DF's family and was also present at their homes. During that time period, respondent had the following contacts with DF's family:

- a. Respondent and her daughter visited inmate DF's daughter and family several times and according to respondent "have come to love them also".
- b. Approximately once a month, while respondent and respondent's daughter were visiting at DF's daughter's home, she and her daughter talked to DF on the telephone.
- c. Inmate DF sent cards and letters to inmate DF's daughter, who per inmate DF's instructions, then sent the cards and letters to respondent and respondent's daughter.
- d. Respondent sent a check for \$50.00 to DF's daughter for DF to purchase a pair of shoes. Respondent gave instructions to DF's daughter to purchase a money order to send to DF. Inmate DF's daughter purchased and sent the money order to him.
- e. On or about November 22, 1998, respondent wrote a letter to DF's mother, stating she had fallen in love with inmate DF and intended to spend the rest of her life loving him.

10. From May, 1998, to December, 1998, respondent and DF passed correspondence to one another in the institution on an almost daily basis when DF brought the mail bag to HSU and she was unloading the bag, or at the end of the day when DF came to pick up the bag. The letters respondent wrote to DF include the following:

- a. In letters dated November 15, 17, 18, 19, 20 and 23, respondent discussed her menstrual flow with inmate DF.
- b. In a letter dated November 19, 1998, respondent discussed her sexual arousal with DF and instructed DF to "Give ol' one eye [a euphemism for inmate DF's penis] a stroke for me".
- c. In a letter dated November 23, 1998, respondent described her sexually aroused state to DF and said that it was in response to his description of his fantasies. She also asked DF if he liked the photograph she gave him of herself wearing a blue dress revealing a substantial amount of cleavage.
- d. In a letter dated November 24, 1998, respondent described her sexually aroused state to inmate DF.
- e. In a letter dated November 25, 1998, respondent informed inmate DF that she reads his letters in

the bathroom during lunch and gets sexually aroused by reading them. In the same letter, respondent described her fantasy of performing oral sex on inmate DF.

f. In a letter dated November 29, 1998, respondent told inmate DF to give her regards to "ol' one eye" because she missed "him".

g. In a letter dated November 30, 1998, Rataczak told DF how much he sexually arouses her and that she is pleased that "ol' one eye" likes her touch. She told DF how much she enjoys hearing him talk about rubbing her bare buttocks and manually stimulating her genital area.

h. In a letter date December 2, 1998, respondent informed inmate DF that his letter aroused her so much sexually she had to use a vibrator.

i. In a letter date December 3, 1998, respondent described to inmate DF her fantasy of performing oral sex on him. Respondent reassured inmate DF that his penis is not too small and also told him how much she missed his taste, his "wet kisses", and his hugs.

j. In a letter dated December 5, 1998, respondent described to inmate DF her fantasy of engaging in sexual intercourse with him and described how his voice sexually aroused her.

k. In a letter date December 6, 1998, respondent described to inmate DF her fantasy of performing oral sex on him and engaging in sexual intercourse with him. In that same letter, respondent planned a rendezvous with inmate DF, and told him that in response to his request, she would wear either a skirt, or dark pants or jeans with a hole in them, so he could have access to her genital area. Respondent also informed DF that if she was menstruating, she would wear a tampon, so he should ignore the string.

L. In a letter dated December 7, 1998, respondent told inmate DF that she liked showing him her buttocks and causing him to have an erection. She also told him how pleased she is that he thinks she has an adequate amount of pubic hair. In that same letter, respondent discussed possible euphemisms for her vagina, and commented that it "was fun giving [him] tongue the other day".

11. At some point in time between May 1998 and December 1998, Ms. Rataczak and inmate DF engaged in sexual contact within the prison on numerous occasions, including the following:

- a. Ms. Rataczak manually stimulated inmate DF's penis to orgasm on at least 2 occasions.
- b. DF touched Ms. Rataczak's breast once, maybe twice.
- c. On more than one occasion, respondent and DF hugged, kissed and/or held hands.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to s. 441.07 (1), Stats., and ch. N 7, Wis. Adm. Code.

2. As the term "patient" is defined in s. N 7.02 (5), Code, inmate DF was a patient of respondent at least from May 1998 to December 10, 1998.

3. By engaging in conduct as described in Findings of Fact 7-11 herein, respondent violated s. N 7.04 (intro), Code and is subject to discipline pursuant to s. 441.07 (1) (d), Stats.

4 By engaging in conduct as described in Findings of Fact 10-11 herein, respondent violated s. N 7.04 (11), Code and is subject to discipline pursuant to s. 441.07 (1) (d), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license to practice as a professional nurse of Beth E. Rataczak, R.N., be, and hereby is, suspended for a period of not less than three years.

IT IS FURTHER ORDERED that after three years, Ms. Rataczak may petition the board for reinstatement of her license. Such petition shall be accompanied by a psychological assessment prepared by a mental health care provider who is approved in advance by the board and who is experienced in evaluating health care providers who have violated boundary issues with patients. The assessment shall include the assessor's conclusions regarding whether Ms. Rataczak may safely and competently return to practice, and shall include recommendations, if any, for limitations to be placed on the license in the event that it is reinstated. Should the board grant reinstatement of the license, the board may limit the license to incorporate any limitations recommended by the assessment or otherwise deemed appropriate by the board.

IT IS FURTHER ORDERED that Respondent's motion to dismiss Count I of the Complaint in this matter is denied.

IT IS FURTHER ORDERED that, pursuant to sec. 440.22, Stats., the costs of this proceeding shall be assessed against the respondent.

EXPLANATION OF VARIANCE

The board has adopted the Findings of Fact and Conclusions of Law recommended by the Administrative Law Judge (ALJ) in their entirety. The board has, however, varied from the recommended discipline. While the ALJ recommended that the license be limited for a period of not less than three years, the board instead orders that the license be suspended for not less than that period of time. Additionally, while the ALJ recommends specific limitations to be imposed during the period of the limited license, the board instead reserves the authority to impose appropriate limitations following the period of suspension in the event that such limitations appear necessary or appropriate at that time. Finally, to assist the board in determining whether reinstatement of the license following the period of suspension is consistent with the public health and safety, the board orders that respondent's petition for reinstatement be accompanied by a psychological assessment, prepared by a mental health provider satisfactory to the board, establishing that respondent may safely and competently resume the practice of nursing.

It is well established that the objective of licensing discipline is the protection of the public by promoting the rehabilitation of the licensee and by deterring other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1968).

In terms of deterrence, respondent's misconduct in this case was intentional and she was a full and enthusiastic participant in the ongoing improper relationship with the inmate. Respondent knew that her conduct was prohibited both by the rules of the department of Corrections and by the nursing board's rules of conduct, but she pursued the relationship nonetheless. These are aggravating factors and evidence an attitude completely contrary to the ethical and moral standards required of professional nurses. To merely limit respondent's license without more would, in the opinion of the board, do little to deter other licensees from engaging in similar misconduct. The limitations proposed by the ALJ, requiring direct supervision of respondent's practice and submission of quarterly employment reports for a minimum period of three years, would presumably discourage similar behavior by this respondent in the future. But that limitation would have little effect on another similarly inclined licensee, who could take comfort from the fact that even if his or her misconduct is discovered, and even if the nature of that misconduct is both blatant and aggravated, it may be expected that there will be no interruption in licensure. The board concludes that a substantial suspension of respondent's licensure is necessary to communicate to other licensees that the board will not tolerate the kind of misconduct engaged in by this respondent. Respondent's own testimony at hearing tends to confirm the validity of this conclusion regarding the deterrence objective:

I knew that when we were caught, I would lose my job, and I did lose my job. But never for one second did I ever entertain the thought that I would lose my license. And if I had, I wouldn't be here today and I would never, never have gotten into a relationship with him or any other inmate. (Tr., p. 185)

Attorney for complainant argues that at the hearing in this matter respondent demonstrated a lack of remorse, evidencing regret only for the consequences of her actions. Accordingly, so the argument runs, respondent has demonstrated no rehabilitation. Respondent's attorney characterizes this position as bizarre: a concession by complainant that respondent is remorseful, but that she is not remorseful for the right reasons. Respondent refers to the ALJ's opinion at page 14, where respondent's testimony is quoted at length, to demonstrate the depth of her remorse. While the cited testimony, a portion of which appears above, certainly evinces remorse, the board is constrained to point out that her testimony reveals one who was aware of the inappropriateness of her conduct but who nonetheless made a conscious decision to go forward based on her assumption that the consequences would affect her employment but not her nursing license. One is left to wonder whether, if her assumption had proved correct, she might be inclined to act similarly in similar circumstances.

In the last analysis, the board concludes that there are still rehabilitation issues to be resolved here. By requiring that, prior to reinstatement of the license, respondent submit an assessment prepared by a mental health professional evaluating her ability to competently and safely return to practice, those issues should be resolved one way or the other.

Dated this 17th day of January, 2001.

STATE OF WISCONSIN

BOARD OF NURSING

Ann Brewer, R.N.

Chair