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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
JULIA REED, LPN,	:	LS0210021NUR
RESPONDENT.	:	

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 10th day of January, 2003.

Linda M. Sanner, RN
Chairperson
Board of Nursing

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS	:	PROPOSED FINAL DECISION
	:	AND ORDER
JULIA M. REED, LPN,	:	LS0210021NUR
RESPONDENT.	:	

PARTIES

The parties to this action for the purposes of s. 227.53 Stats., are:

Julia M. Reed, LPN
6669 N Bourbon Street
Milwaukee, WI 53224

Attorney James E. Polewski

Division of Enforcement

P. O. Box 8935
Department of Regulation & Licensing

Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on November 11, 2002, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney James E. Polewski. The respondent, Julia M. Reed, appeared at the hearing. The respondent was not represented by an attorney. The respondent did not file an answer to the complaint but denied the allegations contained therein.

Based on the entire record of this case, the undersigned 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. The respondent, Julia M. Reed, LPN, is licensed in the state of Wisconsin to practice as a practical nurse, license number 33706.
2. On July 8, 2001 at approximately 10:30 p.m. the respondent physically assaulted Ellen Leverenz, nursing supervisor at Woodland Health Center, Brookfield, Wisconsin, after Ms. Leverenz informed the respondent that the respondent was being sent home.
3. Woodland Health Center is a nursing home with a predominantly elderly population.
4. After the respondent assaulted Ms. Leverenz, the respondent left the nursing home.
5. Upon exiting the nursing home, the respondent without proper reason, activated a fire alarm.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter, pursuant to Wis. Stats, § 441.07.
2. The conduct described in the Findings of Fact constitutes unprofessional conduct within the meaning of Wis. Admin. Code § N 7.04.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the respondent's license to practice as a practical nurse in Wisconsin, number 33706, is SUSPENDED for a period of three (3) weeks from the date of signing of a Final Decision and Order in this matter.

IT IS FURTHER ORDERD that costs of this proceeding shall be assessed against the respondent.

OPINION

The Altercation

Ellen Leverenz testified. She was the nightshift supervisor working at Woodland Health Center on the evening of July 8, 2001. Ms. Leverenz stated that Ms. Reed was a pool nurse (ie..agency nurse) that she had not seen before. It was Ms. Leverenz's understanding that Ms. Reed would have arrived that evening to work at

10:00 p.m. Ms. Leverenz stated that she later asked Ms. Reed to leave because of staffing needs combined with Ms. Reed's apparent unfriendly manner:

Q. How long was Ms. Reed at Woodland Health Center on July 8th, 2001?

A. The total time from when she came in to when she left would have probably been about an hour and a half.

Q. Why did Ms. Reed leave?

A. She left after I had asked -- I had told her that we didn't need her that night, and I asked her to leave because I felt that -- some of the staff had come and told me that she seemed aggressive and unfriendly, not very nice, and we also didn't really need her as a nurse that night. She also wasn't on my schedule, which may have been our scheduler's mistake. It might not have been he mistake. But for the reasons, I asked her to leave, so eventually she did leave. (R.T. p. 8)

When asked to leave, Ms. Leverenz stated that Ms. Reed grabbed her and pushed her:

Q. How did --

A. I know that --

Q. -- Ms. Reed react when you asked her to leave?

A. She was very, very upset when I asked her to go.

Q. How could you tell?

A. Well, what happened was I asked her to leave. She became upset. Exchanged a few words. And then she grabbed me in my clothing and gave me a push across the nurses desk. We were inside the one east-west nurses station, and she pushed me from one side to the other side. (R.T. p.8)

Prior to being grabbed and pushed, Ms. Leverenz stated that she and Ms. Reed exchanged words:

Q. Okay. What were the words that you exchanged with Ms. Reed?

A. I do remember that she was seated and I had asked -- I was standing, to the best of my recollection anyway. I was standing. She was seated. We were close to each other. I told her that I had to ask her to go because some of the staff said that they felt that she was inappropriate, her -- and I guess aggressive, her behavior. And so then what she said -- she said, you better get up out of my face, and she stood up, came within about a foot of me or so. And I said the same thing back to her. I said, you need to get up out of my face. And then --

Q. Why did you say that?

A. -- that's when she did it. Why did I say it? I guess I felt like I don't want my staff to think that they can start talking like this and intimidate me or push me around. It's not -- as a supervisor, I'm expected to maintain order and I have to have people, you know, have respect for me. And I didn't want -- I didn't -- it was probably a mistake the way I handled that situation. I can say as far as maybe it made he more upset, so maybe I could have handled it differently, but my reasoning was that I don't want her to think and I don't want my staff to think that I can be talked to that way or pushed around like that.

Q. After you traded get out of my face comments to each other, what -- what happened next?

A. Well, that's when she grabbed me. We were both standing then. And she grabbed my clothes and just -- do you want me to gesture or not?

Q. Sure, you -- you can --

A. Okay.

Q. -- gesture.

A. It's easier for myself to put myself in the situation. She was standing over here. I was standing here. She held onto my and just turned me and shoved me off with a fairly hard shove. I didn't fall to the ground, but I hit the other side pretty hard. (R.T. pp.11-12)

A police report of the incident was entered into evidence as Exhibit 1. The report identifies two witnesses to the incident. Alicia Johnstone stated that Ms. Reed grabbed Ms. Leverenz' stethoscope which was around her neck and "threw" Ms. Leverenz to the ground. Ms. Johnstone stated that she heard Ms. Reed say, "bitch, get out of my face", and "I'm not going anywhere". Ms. Johnstone also assisted in restraining Ms. Reed from continuing to go after Ms. Reed. The second witness identified in the report, Sunday Uwubiti, stated that he saw Ms. Reed "grab" Ms. Leverenz and push her against the desk. He also indicated that after he entered the altercation and separated the two women, that Ms. Reed attempted to push him away and continued to attempt to "attack" Ms. Leverenz.

As Ms. Leverenz indicated in her statement to the police and her testimony, there is a size disparity between her and Ms. Reed, with Ms. Reed being significantly larger. This was also apparent based upon the ALJ's visual observation of both women at the hearing.

Ms. Reed stated at the hearing that she was sorry that the altercation occurred but claimed that she did not start it as the aggressor.

Based upon the testimony and statements of the witnesses and the demeanor of both Ms. Leverenz and Ms. Reed at the hearing, it is concluded that it is more probable than not that Ms. Reed was the instigator of the altercation between the women.

Ms. Reed placed correspondence from her employer into the record as Exhibit 2. The correspondence indicated

that 1) in three years of scheduling Ms. Reed, her employer supervisor never received any "adverse remarks" about her, and 2) if she is not cancelled 2 hours before the start time for her shift, she gets paid for 4 hours of work. Ms. Reed essentially uses this correspondence to bolster her denial of being the aggressor in the altercation, based upon the fact that she would have gotten paid whether she worked a full shift or was sent home early. Thus, according to Ms. Reed, there simply was no reason why she would have been upset and been an aggressor in the situation. Ms. Reed raises a good point as far as it goes, however, being sent home early does not appear to be a trigger factor in the altercation. The witnesses describe a scene where Ms. Reed appeared unfriendly and aggressive prior to and during the altercation. Significantly, there is uniform agreement that Ms. Reed verbalized her agitated state with comments about Ms. Leverenz needing to get out of Ms. Reed's face. This reaction to authority appears to be the reason for the altercation, not the mere fact of being sent home early. For whatever reason, Ms. Reed appears to have had problems the night in question, and Ms. Leverenz bore the brunt of those problems.

The fire alarm

Patti Jo Schneider was also working at Woodland Health Center on the night of July 8, 2001. She witnessed a portion of the altercation between Ms. Reed and Ms. Leverenz and telephoned 911. As Ms. Reed was leaving the premises, Ms. Schneider followed:

Q. Okay. When you saw Ms. Reed coming down the corridor of one south towards you, what did you do?

A. Well, I knew -- I knew I had already called 911. I knew something wasn't right that happened at that nurses station. So I just kind of wanted to delay her from -- you know, just kind of talk to her and say, you know, you know, how's -- I knew things weren't going well, but I said, how are things going. I was just trying to like delay her long enough or talk to her long enough to give the police time to arrive there and then they would handle the situation from there. And so I kind of just talked. And she -- she told me -- told me that my supervisor had attacked her and that she -- she continued to proceed. She didn't stop to talk to me. She continued walking down the hallway towards the -- the lobby, which would be the exit from the building, and I was following her. I didn't try to touch her or approach her. I was just kind of following behind her -- (R.T. pp 21-22)

Ms. Schneider stayed behind Ms. Reed as Ms. Reed entered the lobby to exit the building. Although Ms. Schneider did not directly see Ms. Reed activate a fire alarm upon exiting the building, Ms. Schneider did contemporaneously observe Ms. Reed leave the building by a route leading past the alarm which was activated, at the time the alarm was activated. This establishes that it is more probable than not that Ms. Reed did in fact activate the fire alarm in question upon exiting Woodland Health Center. (R.T. 25-31)

Ms. Reed denied activating the alarm both to the police and at the hearing. However, the police report contains additional evidence rebutting Ms. Reed's denial and supporting a finding that Ms. Reed did in fact activate the alarm. The report contains the reported conversation between the reporting police officer and one Angel Spicer, who stated that she heard someone ask Ms. Reed if she pulled the fire alarm and she heard Ms. Reed respond, "You got that right."

It has been requested that the discipline to be imposed be that of suspension. After review of the allegations forming the basis for discipline in this case that request is appropriate. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 485 (1969).

Ms. Reed needs to have reinforced to her that such conduct is not appropriate and constitutes unprofessional conduct. A suspension will also place other licensees on notice that the Board of Nursing disapproves of such unprofessional conduct. The suspension will therefore deter other licensees from engaging in this or similar

conduct.

Costs

Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Board of Nursing, and that the board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The ALJ's recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

Date: December 3, 2002

William Anderson Black

Administrative Law Judge