

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE BOARD OF NURSING

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IN THE MATTER OF DISCIPLINARY :  
PROCEEDINGS AGAINST : FINAL DECISION  
: AND ORDER  
NANCY VOLK, R.N., :  
LS0306051NUR :  
RESPONDENT. :

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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 3<sup>rd</sup> day of October, 2003.

Linda Sanner  
Chairperson

STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS	:	PROPOSED FINAL DECISION
	:	AND ORDER
NANCY VOLK, R.N.	:	LS0306051NUR
RESPONDENT.	:	
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The parties to this action for the purposes of s. 227.53 Stats., are:

Nancy Volk, R.N.  
4905 Kappus Street  
Eau Claire, WI 54701

Nancy Volk, R.N.  
4707 E. McDowell Road, #1109  
Phoenix, AZ 85008

**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 July 29, 2003, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney James E. Polewski. The respondent did not appear and did not file an answer to the complaint. 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. Nancy Joan Volk, R.N. was born on March 24, 1953, and is licensed to practice professional nursing in the state of Wisconsin pursuant to license number 30 62981, first granted on September 30, 1975.
2. On May 23, 1997, the Arizona State Board of Nursing revoked Respondent's Arizona license for failing to comply with the conditions of license probation ordered as a result of a prior disciplinary action.
3. On January 23, 2003, the Arizona State Board of Nursing again disciplined Respondent, denying her application for re-instatement of her Arizona license. The Arizona Board found that:
  - a. Respondent had failed to disclose the status of her Arizona license in an application for employment on or about October 10, 2001;
  - b. that while Respondent was working for that employer in Eau Claire, Wisconsin, she had been counseled for incident reports and staff complaints that included using prefilled glass syringes on a vascular access device, which is contraindicated; not following policy related to documentation on a patient's permanent record; failing to carry out written orders or signing off orders while on duty; failing to discontinue an IV when ordered, leaving it to infuse for an additional 8½ hours until it was discovered by the next shift; failing to report significant patient information regarding numerous patients; and that Respondent's explanation for these acts and omissions was that she was having a busy day.
  - c. that Respondent's contract for nursing services as a pool nurse at a Phoenix, Arizona hospital was cancelled on November 4, 2002, for clinical issues, including lack of assessment skills and failure to follow directions.
  - d. that while Respondent told the Arizona Board that she had been working as an RN Traveler at Federal Facilities from October 2001 through August 5, 2002, her then current employer had never assigned her to any Federal facility.

4. The disciplinary action taken against Respondent by the Arizona State Board of Nursing constitutes disciplinary action within the meaning of s. N 7.04(7), Wis. Admin. Code, and is grounds for disciplinary action against Respondent by the Wisconsin Board of Nursing.

## 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 for practice as a registered nurse in Wisconsin, number 62981, is REVOKED.

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

#### OPINION

Section RL 2.14 of the Wisconsin Administrative Code provides that a respondent who fails to answer a complaint or fails to appear at a hearing is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent. In this case, the respondent did not file an answer to the above-captioned complaint, nor did she appear at the scheduled hearing. As a result, the respondent is in default. The attorney for the complainant moved for an order granting default at the hearing. That motion was granted. Evidence was received regarding the respondent's disciplinary history in Arizona. (Exh. 1) It has been requested that the discipline to be imposed be that of revocation. After review of the allegations forming the basis for discipline in this case, and the evidence received, 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).

There is nothing in the record to suggest that imposing any discipline short of revocation would protect the public, have a rehabilitative effect on the respondent, or deter other licensees from engaging in similar conduct. The respondent has not come forward to show remorse, an explanation, or cooperation with the board in this matter. Revocation remains as the only way in which to safeguard the public.

#### 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: August 12, 2003

William Anderson Black  
Administrative Law Judge