

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	LS0411043NUR
MARY L. KUCABA, R.N.,	:	
RESPONDENT.	:	

FINAL DECISION AND ORDER

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Mary L. Kucaba, R.N.
10009 Second Avenue South
Bloomington MN 55420

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 of Nursing. 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. Mary L. Kucaba, R.N., Respondent, date of birth August 12, 1958, is licensed by the Wisconsin Board of Nursing as a registered nurse in the State of Wisconsin pursuant to license number 125293, which was first granted February 11, 1997.
2. Respondent's last address reported to the Department of Regulation and Licensing is 10009 Second Avenue South, Bloomington, MN 55420.
3. During the following events, Respondent was employed by a home health agency as a registered nurse. In that employment, Respondent provided home care nursing services to Mr. A, a 74-year-old patient, at his home in Rusk County, Wisconsin, beginning January 2000. She continued to provide him with professional nursing services until his death on March 17, 2001.
4. Mr. A had a stasis ulcer on his right leg, which required a daily dressing change. Respondent went to Mr. A's home initially three days a week to provide that service and another nurse did so the other four days each week.
5. Beginning in early summer 2000, Respondent and Mr. A began a personal relationship while she was providing him with nursing services. The relationship progressed to include kissing and intimate touching.
6. Respondent sent Mr. A letters and cards suggesting that they have sexual contact. She signed them "Betty" so that other people would not know they were from Respondent.

7. Mr. A and Respondent began having sexual intercourse in approximately early August 2000. Their sexual relationship continued until Mr. A's death March 17, 2001.

8. Mr. A's primary physician was an internist in Ladysmith and Respondent often took Mr. A to appointments he had with the internist for a variety of reasons. When the internist saw Mr. A on September 1, 2000, he noted Mr. A's many serious conditions, said that he was doing "pretty well" and commented that it was remarkable that he was still alive.

9. On August 3, 2000, Respondent accompanied Mr. A to an urologist in Rhinelander to obtain treatment for the erectile dysfunction.

a. The urologist was provided with a list of all medications Mr. A was taking and with a copy of an October 18, 1999 history and physical.

b. The urologist's records show that he was provided with an accurate medical history of Mr. A's conditions.

c. The urologist determined that Mr. A had a positive response to an injection of 10 mg. Caverject brand of alprostadil, which is administered by intracavernosal injection, and prescribed that medication to Mr. A.

d. It was reported to the urologist in Respondent's presence that Mr. A had tried Viagra without success.

e. Respondent represented to the urologist that Mr. A's sexual partner was someone other than herself.

f. On October 2, 2000, Respondent called the urologist's office and told the staff that she wanted the urologist to know that Mr. A's "girlfriend" had been injecting Mr. A with double the dose which was then prescribed. The staff person stressed the importance of compliance with the urologist's orders.

g. On November 8, 2000, Mr. A and Respondent had an appointment with the urologist. At that time, he doubled the dosage of Caverject.

h. Mr. A continued to obtain the medication to January 2001.

10. Respondent did not note in Mr. A's home care records that he had seen the urologist or that he was receiving injections of Caverject. Respondent and Mr. A agreed not to tell Mr. A's internist that Mr. A had seen the urologist or that he was receiving injections of Caverject.

11. On March 17, 2001, Respondent complained of abdominal pain and was pale and diaphoretic. Respondent called an ambulance and Mr. A was transported to the emergency room at Rusk County Memorial Hospital, accompanied by Respondent.

a. He was admitted to the hospital at 3:30 p.m. with a diagnosis of sepsis.

b. He said he was feeling better, but stated that he did not want acute resuscitation, if that were to become necessary.

c. He developed profound bradycardia and died at 8:33 p.m.

12. Following Mr. A's death, Respondent's family found evidence of Respondent's sexual relationship with Mr. A and notified her employer. When confronted by her employer, Respondent acknowledged violations of policies, but denied a sexual relationship with Mr. A. Her employment was terminated based on the admitted violations.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and authority

to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by engaging in the conduct set out above, violated the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public, and has committed misconduct or unprofessional conduct as defined by Wis. Admin. Code § N 7.04(intro) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

3. Respondent, by engaging in inappropriate sexual behavior and sexual contact with a patient, as set out above, has committed misconduct or unprofessional conduct as defined by Wis. Admin. Code § N 7.04 (11) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. That the license of Mary L. Kucaba, R.N., as a registered nurse in the State of Wisconsin is hereby SUSPENDED for a period of one year, effective immediately.
2. The suspension will continue after one year until Respondent has provided proof to the Board of the following:
 - a. Subsequent to the date of this Order, Respondent shall complete six hours of continuing education addressing appropriateness of boundaries between health care professionals and their patients or clients. The program or programs shall first be approved by the Board, or its designee.
 - b. Respondent shall have, at Respondent's own expense, undergone an assessment by a mental health care practitioner experienced in evaluating health care professionals who have become involved sexually with patients or clients.
 - i. The assessor must not have treated Respondent and shall have been approved by the Board, with an opportunity for the Division of Enforcement (Division) to make its recommendation, prior to the evaluation being performed.
 - ii. The Division shall provide the assessor and Respondent with those portions of the investigative file which the Division believes may be of assistance in performing the assessment. Respondent may provide the assessor and the Division with any information Respondent believes will be of assistance in performing the assessment.
 - iii. Respondent shall authorize the assessor to provide the Board, or its designee, with the assessment report and all materials used in performing the assessment and shall provide the Board, or its designee, and the Division with the opportunity to discuss the assessment and findings with the assessor.
 - iv. The assessor shall have provided an opinion to a reasonable degree of professional certainty that Respondent is able to practice with reasonable skill and safety of patients and public and does not suffer from any condition which prevents her from practicing in that manner.
 - c. If Respondent has completed the education required by subparagraph a. and the assessor has rendered the opinion required by subparagraph b.iv., the Board shall end the suspension. The Board may limit Respondent's license in a manner to address any concerns the Board has as a result of the conduct set out in the findings of fact and to address any recommendations resulting from the assessment, including, but not limited to:
 - i. Psychotherapy, at Respondent's expense, by a therapist approved by the Board, to address specific treatment goals, with periodic reports to the Board by the therapist.
 - ii. Additional professional education in any identified areas of deficiency.

- iii. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a professional approved by the Board, with periodic reports to the Board by the supervisor.
- iv. Requiring Respondent to appear before the Board on an annual basis, if requested by the Board, to review the progress of any treatment and rehabilitation.

3. If following the suspension, limitations are placed on Respondent's license, Respondent may petition the Board to modify or end the limitations at any time, but no sooner than six months after a limitation has been made. Whether to modify or end a limitation shall be in the discretion of the Board.

4. If Respondent believes that the Board's refusal to end the suspension is inappropriate or that any limitation imposed or maintained by the Board under paragraphs 2c or 3 is inappropriate, Respondent may seek a class 1 hearing pursuant to Wis. Stat. §227.01(3)(a) in which the burden shall be on Respondent to show that the Board's decision is arbitrary or capricious or inconsistent with this order. The suspension or limitations on Respondent's license shall remain in effect until there is a final decision in Respondent's favor on the issue.

5. Respondent shall, within 90 days of the date of this Order, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$300.00 pursuant to Wis. Stat. § 440.22(2).

6. All requests, notifications and payment shall be mailed, faxed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817
Fax (608) 266-2264

7. Violation of any term or condition of this Order, or of any limitation imposed under paragraph 2c or 3 above, may constitute grounds for revocation of Respondent's license as registered nurse in Wisconsin. Should the Board determine that there is probable cause to believe that Respondent has violated the terms of this Order, or any limitation imposed under paragraph 2c or 3 above, the Board may order that Respondent's license be summarily suspended pending investigation of and hearing on the alleged violation.

Dated at Madison, Wisconsin this 4th day of November, 2004.

Jacqueline A. Johnsrud, R.N.
Chair
Board of Nursing