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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

| | | |
|-------------------------------|---|----------------|
| IN THE MATTER OF DISCIPLINARY | : | |
| PROCEEDINGS AGAINST | : | FINAL DECISION |
| | : | AND ORDER |
| SUSANNE E. KELLY, L.P.N., | : | LS0505031NUR |
| (f/k/a SUSANNE BOLT), | : | |
| RESPONDENT. | : | |

Division of Enforcement Case No. 03NUR201

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 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 20th day of April, 2006.

Marilyn Kaufmann
Member of the Board
Board of Nursing

**STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

**PROPOSED DECISION
Case No. LS0505031-NUR**

**SUSANNE E. BOLT, L.P.N.,
(a/k/a SUSANNE KELLY)
RESPONDENT.**

PARTIES

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

Susanne E. Bolt
a/k/a Susanne Kelly
P.O. Box 49
Ashland, WI 54806

Susanne E. Bolt
a/k/a Susanne Kelly
210 Lindsey Ave.
Oconto, WI 54153

Susanne E. Bolt
a/k/a Susanne Kelly
W7447 Flambeau Point Rd.
Ladysmith, WI 54848

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

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

This matter was commenced by the filing of a Notice of Hearing and Complaint on May 3, 2005. Respondent's Answer was filed on May 24, 2005. The hearing was held on January 24, 2006. Atty. Michael J. Berndt appeared on behalf of the Division of Enforcement. Atty. Larry Cohrt appeared on behalf of the respondent, Susanne Bolt, until the day of the hearing. At the hearing held in this matter, Ms. Bolt appeared without legal counsel.

Based upon the record herein, the 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. Susanne E. Bolt, a/k/a Susanne Kelly, (dob: 8/3/50) is licensed as a Licensed Practical Nurse in the State of Wisconsin (license #302947). This license was first granted on December 29, 2000.

2. Ms. Bolt's most recent address on file with the Department of Regulation and Licensing is 210 Lindsey Avenue, Oconto, WI 54153

3. On October 28, 2002, the State of Iowa Board of Nursing commenced a disciplinary proceeding against the Respondent by the filing of a Statement of Charges.

4. The Statement of Charges filed by the State of Iowa Board of Nursing alleges, in part, the following:

Count I The Respondent is charged with unethical conduct in violation of Iowa Code § 147.55 (3) as defined by 655 IAC 4.19 (4) (d) for committing an act or omission that may adversely affect the physical or psychosocial welfare of the patient or client.

Count II The Respondent is charged with unethical conduct in violation of Iowa Code

§ 147.55 (3) as defined in 655 IAC 4.19 (4) (f) for engaging in sexual conduct, including inappropriate physical contact or any behavior that is seductive, demeaning, or exploitative, with regard to a patient or former patient.

5. On June 5, 2003, the State of Iowa Board of Nursing issued a Settlement Agreement, Consent Order and Final Order for the voluntary surrender of Respondent's license to practice as a practical nurse in the state of Iowa. The surrender of Respondent's license was in response to the disciplinary proceeding commenced by the Iowa Board of Nursing on October 28 2002.

6. Paragraph 4 of the Settlement Agreement, Consent Order, and Final Order states, in part, that Iowa Code § 17A.10 (1), 272C.3 (4) (2001 and 2003) and 655 IAC 4.9 authorize the resolution of contested cases by informal settlement without adjudication of the claims and merits.

7. Paragraph 1 of the Order contained in the Settlement Agreement states, in part, that when accepted by the Board, Respondent's voluntary surrender of her license to practice as a nurse in the State of Iowa shall have the same force and effect as an order of revocation.

8. The Settlement Agreement, Consent Order, and Final Order issued by the Iowa Board of Nursing on June 5, 2003, does not contain a conclusion of law that the Respondent violated any statute or rule.

9. The results of the search of Ms. Bolt's name on the Iowa Board of Nursing's Online License Verification system state, in part, "Current Disciplinary Action - Yes".

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to Wis. Stats. § 441.07, and Wis. Adm. Code ch. N 7.
2. Respondent, by having disciplinary action through final adjudication taken against her nursing license by the Iowa Board of Nursing, as described in Findings of Fact 3-9 herein, violated Wis. Adm. Code § N 7.04 (7) and Wis. Stats. §441.07 (1) (d).

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Susanne E. Bolt, a/k/a Susanne E. Kelly, to practice as a Licensed Practical Nurse (license #302947) be, and hereby is, **LIMITED** for a period of not less than two (2) years, subject to the following conditions and limitations:

(1) Respondent shall not practice in the following settings unless pre-approved by the Board or its designee: home health care, hospice care, pool nursing or agency nursing.

(2) Within 120 days of the date of this Order, Respondent shall submit documentation of an assessment performed by a health care provider acceptable to the Board of her current mental health status as it relates to her ability to practice nursing without committing boundary violations. The assessor shall submit a written report of his/her findings directly to the Board, including: 1) findings regarding diagnoses; 2) recommendations (if any) for treatment; 3) an evaluation of Ms. Bolt's level of cooperation in the assessment process; 4) work restriction recommendations, and 5) Ms. Bolt's prognosis. The assessment shall occur within thirty (30) days prior to the date of its submission and reflect the fact that the person performing the assessment received a copy of this Order.

(a) If the assessment report referred to above recommends continued therapy, respondent shall maintain successful participation in a program of treatment at a health care facility acceptable to the Board. As part of treatment, respondent shall attend therapy on a schedule as recommended by her therapist; the Board may, however, in its discretion establish a minimum number of therapy sessions per month.

(b) If continued therapy is recommended by the assessor, respondent shall arrange for submission of quarterly reports to the Board from her therapist evaluating her attendance and progress in therapy. If the assessment recommends work restrictions, respondent shall comply with all restrictions recommended.

(c) Respondent shall provide the Board with current releases complying with state and federal laws, authorizing release and access to the records of the health care provider (s) performing her assessment and, if applicable, those providing treatment to her.

(d) Respondent shall be responsible for all costs associated with the assessment referred to above, and for all treatment, training and reporting required under this Order.

(3) Within sixty (60) days of the date this Order is signed, Respondent shall successfully complete at least twelve (12) hours of education relating to boundary violations that have been pre-approved by the Board or its designee. Respondent shall provide proof of the completion of the boundary training to the Department Monitor within 90 days of the date of this Order.

(4) Respondent shall provide all current and prospective nursing employers with a copy of this Final Decision and Order and any subsequent Orders; arrange for submission of quarterly reports to the Board of Nursing from her nursing employer (s) reporting the terms and conditions of her employment and evaluating her work performance, and report to the Board any change in her employment status within five (5) days of such change.

(5) Upon a showing by Respondent of complete, successful and continuous compliance for a period of not less than two (2) years with the terms of this Order, the Board may grant a petition by Respondent for return of full licensure if it determines that Respondent may safely and competently engage in practice as a Licensed Practical Nurse.

(6) Respondent may petition the Board to revise or eliminate any of the above conditions. Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats., s. 227.01 (3) and 227.42.

(7) The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including receiving and coordinating all reports and petitions. The Department Monitor may be reached as follows:

Department Monitor
Department of Regulation & Licensing, Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
FAX (608) 266-2264
TEL. (608) 267-3817

(6) Pursuant to s. 440.22 Wis. Stats., the cost of this proceeding shall be assessed against Respondent. The costs shall be paid to the Department of Regulation and Licensing no later than one year following the date of this Order.

This order is effective on the date on which it is signed by a designee of the Board of Nursing.

OPINION

I. Procedural History

This matter was commenced by the filing of a Notice of Hearing and Complaint on May 3, 2005. Respondent's Answer was filed on May 24, 2005. The hearing was held on January 24, 2006. Atty. Michael J. Berndt appeared on behalf of the Division of Enforcement. Atty. Larry Cohrt appeared on behalf of the respondent, Susanne Bolt, until the day of the hearing. At the hearing held in this matter, Atty. Cohrt appeared and moved for admission to represent Ms. Bolt in the proceeding. That request was denied because Administrative Law Judges do not have the authority to admit out-of-state counsel to practice law in Wisconsin. The Administrative Law Judge offered to adjourn the hearing to provide Atty. Cohrt with an opportunity to seek admission to practice law in Wisconsin from the Wisconsin Supreme Court, or to affiliate with an attorney licensed to practice law in Wisconsin. Atty. Cohrt represented that Ms. Bolt was prepared to proceed with the hearing without legal counsel. *Transcript p. 4-8; Exhibit 3.*

II. Applicable Laws

441.07 Revocation. (1) The board may, after disciplinary proceedings conducted in accordance with rules promulgated under s. 440.03 (1), revoke, limit, suspend or deny renewal of a license of a registered nurse, a nurse-midwife or a licensed practical nurse, may revoke, limit, suspend or deny renewal of a certificate to prescribe drugs or devices granted under s. 441.16, or may reprimand a registered nurse, nurse-midwife or licensed practical nurse, if the board finds that the person committed any of the following:

(d) Misconduct or unprofessional conduct.

N 7.04 Misconduct or unprofessional conduct. As used in s. 441.07 (1) (d), Stats., "misconduct or unprofessional conduct" means any practice or behavior which violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public. "Misconduct or unprofessional conduct" includes, but is not limited to, the following:

(7) Having disciplinary action through final board adjudication taken against one's license in another jurisdiction;

III. Summary of Evidence

The Division of Enforcement alleges in its Complaint that Ms. Bolt, by having been disciplined by the Iowa Board of Nursing, violated Wis. Adm. Code § N 7.04 (7) and Wis. Stats. §441.07 (1) (d). Ms. Bolt denies that the violation occurred. The evidence presented establishes that the violation occurred.

Wis. Stats. §441.07 (1) (d), states that the Wisconsin Board of Nursing may discipline a Licensed Practical Nurse if the nurse has engaged in misconduct or unprofessional conduct.

Wis. Adm. Code § N 7.04 (7), states, in part, that misconduct or unprofessional conduct includes, but is not limited to, having disciplinary action through final board adjudication taken against one's license in another jurisdiction.

On October 28, 2002, the State of Iowa Board of Nursing commenced a disciplinary proceeding against Ms. Bolt by the filing of a Statement of Charges. The Statement of Charges alleges, in part, the following [Exhibit #1]:

Count I The Respondent is charged with unethical conduct in violation of Iowa Code § 147.55 (3) as defined by 655 IAC 4.19 (4) (d) for committing an act or omission that may adversely affect the physical or psychosocial welfare of the patient or client.

Count II The Respondent is charged with unethical conduct in violation of Iowa Code § 147.55 (3) as defined in 655 IAC 4.19 (4) (f) for engaging in sexual conduct, including inappropriate physical contact or any behavior that is seductive, demeaning, or exploitative, with regard to a patient or former patient.

On June 5, 2003, the State of Iowa Board of Nursing issued a Settlement Agreement, Consent Order and Final Order ("Settlement Agreement") for the voluntary surrender of Ms. Bolt's license to practice as a practical nurse in the state of Iowa. The surrender of Ms. Bolt's license was in response to the disciplinary proceeding commenced by the Iowa Board of Nursing on October 28, 2002. Paragraph 4 of the Settlement Agreement states, in part, that Iowa Code § 17A.10 (1), 272C.3 (4) (2001 and 2003) and 655 IAC 4.9 authorize the resolution of contested cases by informal settlement without adjudication of the claims and merits. The Settlement Agreement does not contain a conclusion of law that Ms. Bolt violated any statute or rule. Exhibit #1.

The results of the search of Ms. Bolt's name on the Iowa Board of Nursing's Online License Verification system state, in part, "Current Disciplinary Action - Yes". Exhibit #2

The Division of Enforcement offered Exhibits 1-3, and the testimony of Richard C. Miller into evidence.

Mr. Miller has been employed by the Iowa Board of Nursing since 1987 as the Chief Investigator. Mr. Miller testified that his duties include review and assignment of complaints to investigators in his office and supervision of the activities of those investigators. He also supervises and participates in, to some extent, the case management duties for licensees sanctioned by the Iowa Board. Occasionally, he prepares proposed settlements for contested cases for resolution of those matters. After the Board takes action, he makes assignments to staff for case supervision of the licensees while they are under stipulations of the Board Order. Transcript, p. 16-45.

In reference to Ms. Bolt, Mr. Miller testified that he made the initial assignment for the investigator, and after the proposed settlement agreement was accepted by the Iowa Board of Nursing, a cover letter was sent, under his signature, to Ms. Bolt relating to the Board's action. He testified that in his experience as the Chief Investigator and Administrative Officer for the Board, the Order issued by the Iowa Board involving Ms. Bolt would be considered by the Board to be discipline.

Ms. Bolt offered Exhibits 3-12, and the testimony of Atty. Larry Cohrt into evidence. She also testified on her own behalf. Atty. Cohrt, who represented Ms. Bolt in the case before the Iowa Board of Nursing, testified that he received assurances from the Attorney representing the Iowa Board of Nursing that the resolution of Ms. Bolt's case would be treated as an uncontested matter without adjudication of the claims or merits. Otherwise, Ms. Bolt would not have signed the Settlement Agreement. He said that he and Ms. Bolt were convinced that the Iowa charges were not meritorious, and that they wanted a hearing if that was necessary. Transcript p. 63-75; Exhibits 5 and 6.

IV. Discussion of Evidence

The Division of Enforcement argues that the Settlement Agreement approved by the Iowa Board of Nursing resulted in discipline being imposed against Ms. Bolt nursing license. Ms. Bolt argues that the disciplinary action taken by the Iowa Board of nursing did not result in "disciplinary action through final board adjudication", because the disciplinary action was settled without an adjudication of the claims and merits. She cites Paragraph 4 of the Settlement Agreement which states, in part, that certain provisions in the Iowa law authorize the resolution of contested cases by informal settlement without adjudication of the claims and merits.

In my opinion, the evidence presented establishes that the Settlement Agreement approved by the Iowa Board of Nursing resulted in discipline being imposed against Ms. Bolt's nursing license. Paragraph 1 of the Order contained in the Settlement Agreement states, in part, that when accepted by the Board, Respondent's voluntary surrender of her license to practice as a nurse in the State of Iowa shall have the same force and effect as an order of revocation. Also, as noted previously, Mr. Miller testified that in his experience as the Chief Investigator and Administrative Officer for the Board, the Order issued by the Iowa Board involving Ms. Bolt would be considered by the Board to be discipline. In addition, the results of the search of Ms. Bolt's name on the Iowa Board of Nursing's Online License Verification system state, in part, "Current Disciplinary Action - Yes". Exhibit #2

IV. Appropriate Discipline

Having found that Ms. Bolt violated statutes and rules relating to the practice of practical nursing, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Board of Nursing is authorized under Wis. Stats. § 441.07 (1), to reprimand a licensed practical nurse or limit, suspend or revoke the license of a licensed practical nurse for misconduct or unprofessional conduct.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1969).

The Division of Enforcement recommends that Ms. Bolt's license to practice nursing be limited for a period of not less than 2 years and that she be required to comply with certain conditions including, but not limited to, completion of six (6) hours of continuing education relating to boundary violations. Ms. Bolt recommends that the matter be dismissed. She also indicated that she would relinquish her license rather than serve a probation period. *Transcript p. 80-86*.

The Administrative Law Judge recommends that Ms. Bolt's license to practice as a licensed practical nurse be limited, as set forth in the proposed Order. This measure is designed primarily to assure protection of the public and to deter other licensees from engaging in similar misconduct. Ms. Bolt has shown that she is incapable of practicing nursing in a manner that safeguards the interest of the public. Any measure short of a limited license would not provide adequate protection to the public, and would not deter other licensees from engaging in similar misconduct.

VI. Costs of the Proceeding

Wis. Stats. § 440.22(2), 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, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The Administrative Law Judge'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.

This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist. In the Matter of Disciplinary Proceedings against M. Joanne Wolf, 165 Wis. 2d 1, 12, 476 N.W. 2d 878 (1991); In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III, 116 Wis. 2d 380, 385, 342 N.W. 2d 406 (1984).

Based upon the record herein, the Administrative Law Judge recommends that the Board of Nursing adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 27th day of March, 2006.

Respectfully submitted,

Ruby Jefferson-Moore
Administrative Law Judge