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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

:

FINAL DECISION

:
:
:
:

SHEILA E. NOVIN, R.N.,
RESPONDENT.

AND ORDER
LS0510061NUR

Division of Enforcement Case No. 03NUR131

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 FINAL DECISION
	:	AND ORDER
SHEILA E. NOVIN, R.N.,	:	LS-0510061-NUR
RESPONDENT.	:	

The parties to this action for the purposes of Section 227.53 of the Wisconsin statutes are:

Sheila E. Novin
7104 Nashota Ct.
Mequon, WI 53092

Wisconsin Board of Nursing
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935

A hearing in the above-entitled matter was held on January 31, 2006, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney Arthur Thexton. The respondent appeared pro se.

Based on the entire record herein, the administrative law judge recommends that the Board of Nursing adopt as its final decision in this proceeding, the following Findings of Fact, Conclusions of Law and Order.

Findings of Fact

1. Sheila E. Novin, R.N., was born March 2, 1961, and is duly licensed as a professional nurse in the State of Wisconsin license #95261, which was originally granted on August 22, 1986.
2. The Respondent's most recent address on file with the Department of Regulation & Licensing is 7104 Nashota Ct., Mequon, WI 53092.
3. On June 26, 1996, the Respondent was convicted in Milwaukee County Circuit Court of three counts of knowingly falsifying the medical records of a medical assistant recipient with the intent to defraud, a violation of Wis. Stat. § 943.39(1), and one count of knowingly and willfully billing medical assistance for services that she did not provide, a violation of Wis. Stats. §§ 49.49(1)(a)1 and 49.49(1)(b)1.
4. On March 16, 1997 the Respondent was excluded under § 1128(a)(1) of the Social Security Act from participation in the Medicare, Medicaid, and all Federal health care programs as defined in § 1128b(f) of the Social Security Act. Because of this exclusion, the Respondent was prohibited from seeking payment from Medicaid and Medicare for any services that she provided after March 16, 1997.
5. On May 1, 1997, the Respondent was disciplined for the actions set forth in finding of fact number 3 above, in file 96 NUR 31. The Respondent's license was limited to require supervision and independent verification of hours worked, 100 hours of community service, and eight hours of continuing education in nursing laws and ethics. Her unlimited license was restored on Aug. 15, 1998.
6. From September 1997 through March 2002, the Respondent set up and operated a series of businesses that provided temporary nursing services to patients, including Medicare and Medicaid beneficiaries, residing at nursing homes and other health care facilities.

7. The Respondent personally provided nursing services to Medicare and Medicaid beneficiaries at nursing homes and other health care facilities. The Respondent used the names Sheila Smith (a former name) and Sheila Novin-Smith when working as a nurse on behalf of her businesses.

8. The Respondent submitted invoices to and received payment from nursing homes and other health care facilities for services provided by herself and other individuals employed at her staffing businesses. These invoices included charges for nursing services provided to Medicare and Medicaid patients residing at those facilities. The nursing homes and other health care facilities, to which the Respondent submitted invoices, sought and obtained payment from Medicare and Medicaid for services the Respondent and others working for the Respondent's business provided.

9. The Respondent concealed and failed to disclose the fact that she had been excluded from Medicare and Medicaid and was, therefore, prohibited from seeking payment from Medicare and Medicaid for services she provided.

10. The Respondent offered and paid money to an employee at a health care facility, who was responsible for scheduling temporary nursing services at the facility, to induce the employee to order and arrange for services from the Respondent's businesses.

11. The Respondent and her businesses received in excess of \$1.2 million from nursing homes and other health care facilities for providing temporary nursing services to patients, including Medicare and Medicaid beneficiaries.

12. On December 9, 2002, the Respondent pled guilty and was convicted in U.S. District Court for the Eastern District of Wisconsin in case 02-CR-193 of health care fraud, contrary to 18 U.S.C. §§ 1347 and 2, and illegal remuneration, contrary to 42 U.S.C. §§ 1320(a)-7b(b)(2)(B).

13. The Respondent was sentenced to thirty-three months in a federal prison, ordered to pay a \$200.00 assessment, and ordered to pay restitution in the amount of \$351,600.

Conclusions of Law

1. The Wisconsin Board of Nursing has jurisdiction to act in this matter, pursuant to Wis. Stat. §440.03(1) and 441.07(1) (d) and Wis. Admin. Code N §7.01, N 7.04(1), and N 7.04(13).

2. The Respondent, by engaging in the conduct set out in the Findings of Fact six through eleven, has violated laws substantially related to practice under her license, and has committed misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(1) and (13), which subjects the Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).

Order

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Sheila E. Novin, to practice as a registered nurse is REVOKED.

IT IS FURTHER ORDERED that Sheila E. Novin pay the assessable costs of this proceeding.

Applicable Law

Wisconsin Statutes §441.07 provides in part;

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.

Wis. Admin. Code N 7.04 Misconduct or unprofessional conduct provides, in part:

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:

(1) Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing. A certified copy of a judgment of conviction is prima facie evidence of a violation;

(13) Obtaining or attempting to obtain any compensation by fraud, misrepresentation, deceit or undue influence in the course of nursing practice.

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).

The state's purpose in licensing professionals is to protect its citizens.

Strigenz v. Department of Regulation and Licensing 103 Wis.2d at 286, 307 N.W.2d at 667.

License revocation is the ultimate means of protecting the public short of fining or imprisonment.

Strigenz v. Department of Regulation and Licensing, 103 Wis.2d 281, 287, 307 N.W.2d 664 (1981).

Opinion

Following the hearing the attorney for the Division of Enforcement filed a motion to augment the record with attached as an exhibit an administrative law finding of the Department of Health and Human Services, Departmental Appeals Board, dated December 7, 2005, sustaining the decision of the federal Inspector General to exclude the Respondent for a period of 22 years from participating in Medicare, Medicaid and all other federal health care programs. This exclusion is based upon the conduct contained in the Findings of Fact in this proceeding related to the Respondent's criminal convictions. The Respondent has not filed an objection to the Division of Enforcement's motion. The motion is denied as no affidavit of service was filed with the administrative law judge.

The Respondent has filed a document responsive to the complaint, (Exh. 4), that is liberally construed as an answer. In this answer the Respondent concedes that she was convicted of health care fraud in federal court as alleged in the complaint. This conviction is further established by the remaining exhibits introduced in this case. The Respondent further testified at the evidentiary hearing that she was convicted of health care fraud. The state has therefore met its burden of proof that the Respondent committed unprofessional conduct as alleged in the complaint.

The discipline sought is that of revocation. The Respondent argues that such a result is too severe, as it would leave her without the ability to practice as a nurse. She stressed at the hearing that her fraud conviction was not based upon any actual hands on type of nursing practice violation, (ie..nursing skills), and so she should be allowed to continue in the actual practice of nursing.

The Respondent devoted a good portion of her answer and her testimony at the hearing trying to explain away or rationalize the findings of fact underlying her fraud conviction. Her intent appeared to be to minimize them, or to frame them as misunderstandings by others or confusion on her part. In sum, while admitting her conduct, her efforts have been directed

toward impeaching the factual basis comprising that conduct. Her efforts to explain away her conduct do not demonstrate that she has taken full responsibility for her actions. Rather, her pattern of conduct is clear, stretching back to 1996, that she knows how to commit fraud on the health care system and has continued to do so up until her latest conviction.

At the hearing the attorney for the Division of Enforcement described these efforts to explain away her conduct and the myriad of explanations she now provides for it as akin to, to paraphrase, 'I provided you the opportunity to catch me and you didn't.' This is an apt description of the Respondent's "explanations" provided both in her answer and at the hearing. What is not evident is a credible attempt by the Respondent to sincerely take responsibility for her actions. Rather, according to the Respondent, the established facts underlying her criminal convictions were the faults of others or misunderstandings by her. I conclude otherwise; that she knew all too well how to work the system and the complexity of her tale is part of her ongoing attempt to cover up the guilt for her actions. This forum provides her the arena to make a last ditch effort to avoid the anticipated result of her latest conviction; revocation of her credential.

While the Respondent indicated at the hearing that she did deserve to be disciplined, I do not find it credible to conclude that she is taking full responsibility for her actions. I also do not find it credible that she has shown any remorse at all. The convoluted explanations and rationale for her conduct convince me that she is not a candidate for rehabilitation or education, because in the final analysis any nursing context into which she might be placed will be at risk that she will not follow the law; while at the same time rationalizing such conduct in her mind.

The respondent's conduct creates a risk to the health, safety and welfare of the public. The patient health care delivery system allocates scarce resources to provide for patient care. The Medicare and Medicaid programs are designed to allocate these resources. Of necessity these programs require that providers be accurate and responsible for the care that is provided, by whom it is provided and at what cost it is provided. The system is built upon the trust placed on these providers to accurately account for what is done and by whom. Hurting this system by engaging in fraud adversely impacts patient care just as much, if not more so, than individualized unprofessional conduct aimed at a specific patient. If the system cannot be trusted, or is adversely impacted by fraud, the result can be reduced health care to patients who need it. A systemic attack on health care delivery, as evidenced by the Respondent's fraud, simply put, hurts *all* patients.

The Respondent was first convicted in state court for fraud in 1996. Thereafter, the Board of Nursing gave her a second chance by allowing her to continue to practice nursing. Now she once again asks the Board to allow continued practice following her latest fraud conviction. However, this demonstrates that while she was trusted to continue practice the first time, she has belayed that trust as evidenced by her latest fraud conviction. She has shown no reason to be trusted one more time. One purpose of discipline is to promote rehabilitation. The Respondent has demonstrated that given a second chance to demonstrate rehabilitation following her 1996 fraud conviction, she failed. Rather, she went right back to her pattern of engaging in fraudulent conduct. Thus, it appears that the Respondent is not willing to be rehabilitated and any discipline short of revocation will not protect the public. The state's purpose in licensing professionals is to protect the public.

The Respondent has presented no valid evidence in mitigation. Accordingly, revocation remains the only viable option to protect the public. Ultimately, revocation of the Respondent's license sends a strong message to deter other licensees from engaging in similar conduct.

Costs

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats., and sec. RL 2.18, Wis. Admin. Code, but neither the statute nor the rule clearly indicates the circumstances in which costs are to be imposed. The Board of Nursing has the discretion to impose all, some, or none of the costs of the proceeding.

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 on two factors. First, 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 an evidentiary or default hearing, that licensee should bear the costs of the proceeding.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Date: March 24, 2006

William Anderson Black
Administrative Law Judge