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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
BRUCE L. FREDERICK, R.N.,	:	LS0511011NUR
RESPONDENT.	:	

Division of Enforcement Case No. 03NUR193

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 9th day of March, 2006.

Marilyn Kaufmann
Member of the Board
Board of Nursing

IN THE MATTER OF THE DISCIPLINARY	:		
PROCEEDINGS AGAINST	:		
	:	PROPOSED	
	:	FINAL DECISION AND	
	:	ORDER	
BRUCE L. FREDERICK, R.N.,	:	LS 0511011 NUR	RESPONDENT
:	:		

PARTIES

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

Bruce L. Frederick
1619 E. Lake Bluff
Shorewood, WI 53211

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

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

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on December 6, 2005, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney John R. Zwiig. The respondent, Bruce L. Frederick, 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. Bruce L. Frederick, R.N., Respondent, date of birth February 13, 1958, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin, pursuant to license number 130606, which was first granted August 28, 1998.
2. The Respondent's last address reported to the Department of Regulation and Licensing is 1619 E. Lake Bluff, Shorewood, WI 53211.
3. The Respondent was employed as a registered nurse in the Health Services Unit at the Milwaukee County House of Corrections (MCHC) at the time of the set forth in Findings of Fact 6 and 7.
4. The Respondent's job duties included providing nursing services to inmates at MCHC.
5. The Respondent was discharged for cause on September 16, 2003 following a hearing before the Milwaukee County Personnel Review Board for conduct including that alleged in Findings of Fact 6 and 7.

6. On November 20, 2002, the Respondent engaged in sexual harassment of a 19-year-old male inmate in front of other inmates by making inappropriate statements and gestures to the inmate while the Respondent was passing medications to inmates. The Respondent, while looking at the inmate:

- a. Made a gesture with his hand towards Respondent's mouth, as though he were performing fellatio.
- b. Smiled at the inmate and said "give me a kiss."
- c. Made hand gestures towards Respondent's anus and said "In my ass. In my ass."

7. On March 15, 2003, a female nurse was instructing a male inmate how to collect and provide a stool specimen. The Respondent was also present and stood to the side and behind the inmate.

- a. The inmate did not have any condition or complaint which required touching of his back by a nurse.
- b. The Respondent made a joking statement that they were brothers because he was ten percent Black, placed his hand low on the inmate's back and caressed and rubbed his back with massaging motions up to the neck area.
- c. The touching was not for any nursing purpose and made the inmate feel uncomfortable.
- d. While the Respondent was doing touching and talking to the inmate, the Respondent grasped his own penis with one hand through his cotton scrubs in a manner that made its outline visible and made shaking motions with it.
- e. The inmate did not see the Respondent grasp his own penis, but would have had he been looking.

f. The female nurse saw the Respondent's behavior of grasping and shaking his penis and was shocked by it and made uncomfortable in her workplace.

8. The Division of Enforcement made the following attempts to obtain the Respondent's response to the allegation against him:

- a. On January 12, 2004, the investigator sent Respondent a letter asking him to respond to the allegations by January 27. No response was received.
- b. On February 6, 2004, the investigator called and spoke with the Respondent. The Respondent confirmed that the address to which the letter had been sent was his current address, but contended he did not receive the letter. The Respondent provided a fax number and the investigator faxed a copy of the letter to him on that date. No response was received.
- c. On February 18, 2004, the investigator again called and spoke with the Respondent, who said he would respond within a week. No response was received.
- d. On March 3, 2004, the investigator sent a certified letter to the Respondent asking him to respond by March 9, 2004. The mailing was returned unclaimed on April 23, 2004.
- e. On March 16, 2004, the investigator sent letters to the Respondent by regular and certified mail notifying him that because no response had been received, disciplinary action would be commenced and revocation of his license would be sought. No response was received to the regular mailing and the certified mailing was returned unclaimed on April 3, 2004.
- f. On March 26, 2004, the investigator received an e-mail from the Respondent. In the e-mail, the Respondent confirmed that his address was unchanged, contended he could not fully respond to the allegations without reviewing a transcript of the Milwaukee County proceedings, and said he would send a letter with further information. No further response was ever received by the Division.
- g. On March 30, 2004, the investigator sent the Respondent a letter requesting a response to the allegations within 10 days. No response was received.
- h. On April 15, 2004, the investigator sent the Respondent an e-mail telling him that because he had not responded to the March 30 letter, disciplinary action would be commenced.

- i. On April 27, 2004, the Respondent e-mailed the investigator that he would have a response by April 30 or May 1, 2004.
- j. The Respondent never responded to the allegations in the complaint.

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 Findings of Fact 6 and 7, constitutes misconduct or unprofessional conduct by the Respondent within the meaning of Wis. Adm. Code §§ N 7.04(intro) and 7.04(4), and the Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).
3. The conduct described in Findings of Fact 6 and 7 constitutes an agency finding within the meaning of Wis. Stats. §§ 48.685 and 50.065.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Respondent's license for practice as a registered nurse in Wisconsin, number 130606, 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 he 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.

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, that request is appropriate.

The respondent has demonstrated extreme disregard for the personal and private health care rights of patients. The respondent's actions were done in a cavalier manner which mocked legitimate medical care. Moreover, the respondent demonstrated this disregard in the presence of another health care giver. To protect the public, caregivers such as the respondent must undertake their professional duties with the utmost regard for their patients and peers.

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 therefore 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. To not revoke the respondent's license would instead wrongly signal others to engage in similar conduct. 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: January 24, 2006

William Anderson Black
Administrative Law Judge