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

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

**FINAL DECISION AND ORDER
Case No. LS0508023-NUR**

**SEAN L. HILLERY, R.N.,
RESPONDENT.**

PARTIES

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

Sean L. Hillery
6356 N. 105th Street
Milwaukee, WI 53225

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 August 2, 2005. Respondent's Answer was filed on September 1, 2005. The hearing was held on July 26-27, 2006 and August 3, 2006. Closing arguments and supplemental documents were filed on September 21, 2006. Atty. John R. Zwiag appeared in this matter on behalf of the Division of Enforcement. Atty. Anna M. Pepelnjak appeared on behalf of the Respondent, Sean L. Hillery.

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. Sean L. Hillery (dob: 3/19/66) is licensed by the Wisconsin Board of Nursing as a Registered Nurse in the state of Wisconsin pursuant to license #137886, which was first granted on April 24, 2001.
2. Respondent was also licensed by the Wisconsin Board of Nursing as a Licensed Practical Nurse (LPN) in the state of Wisconsin pursuant to license number 301752, which was first granted on September 11, 1998.
3. Respondent has not renewed his LPN license since it expired on April 30, 2003, but could renew it pursuant to Wis. Stats., § 440.08 (3) (a) and Wis. Adm. Code § N 5.03 (2) by payment of fees.
4. Respondent's last address reported to the Department of Regulation and Licensing is 6356 N. 105th Street, Milwaukee, WI 53225.
5. At all times relevant to this action, Respondent was employed as an evening supervisor and registered nurse at St. John's Home of Milwaukee, 1840 North Prospect Avenue, Milwaukee, Wisconsin.

6. In the fall of 1998, Mr. Hillery started employment at St John's Home of Milwaukee ("St. John's") as a Licensed Practical Nurse. Except for a few days in 1998, Mr. Hillery was employed at St. John's on a continuous basis until September of 2003. At that time, St. John's was comprised of different living areas for residents and patients. The facility consisted of a nursing home, which was located on the first two floors of the complex; an assisted living center, which was located on the third floor of the building, and the Tower Apartments ("Towers"), a ten-story independent living center for residents.

7. In the fall of 1999, Mr. Hillery met patient AA who, at that time was 73. Patient AA was living in the Towers. At that time, Mr. Hillery's duties consisted of providing patient care and passing medications in the nursing home. The nursing staff at the nursing home, including Mr. Hillery, also provided emergency services to the residents who lived the Towers.

8. From 1999, when Mr. Hillery met patient AA, until the spring of 2001 when he became a registered nurse, Mr. Hillery's contact with patient AA was limited. He saw Patient AA when she would walk through the nursing home and when she would walk over to talk with him.

9. When Mr. Hillery became a Registered Nurse in 2001, his job duties at St. John's changed. He was immediately promoted to supervisor at the nursing home. As a supervisor, Mr. Hillery had freedom to roam basically throughout the entire facility. As the second shift nursing supervisor, he was responsible for handling nursing matters at the nursing home and the Towers.

10. As a result of his additional freedom and responsibilities, Mr. Hillery encountered patient AA more frequently. He saw her in the dining room on the third floor of the facility. Sometimes, he would sit with her to eat there. He would also sit with her if she sat in the CBRF center, and she would visit him on the floor. Mr. Hillery said that he treated patient AA "like she was the mother" that he didn't have. He took her to appointments; ran errands for her; purchased food for her; purchased gifts for her and celebrated her birthday. At some point in time, Mr. Hillery introduced his family to patient AA, and on occasion they would spend time with patient AA at the nursing home.

11. In the spring of 2003, Mr. Hillery became involved with patient AA's finances. Using his laptop computer, Mr. Hillery said that he introduced patient AA to the Internet, showed her how to use it and set up an e-mail account with her under his AOL screen name. Patient AA used Mr. Hillery's laptop under the dial-up services in her apartment. Mr. Hillery said that one day patient AA received an e-mail from a person named Paul Kema soliciting business partners for a construction business in South Africa. Mr. Hillery said that Kema's e-mail stated that Kema was not asking for any money and that patient AA should give him a call to discuss any questions she had. Patient AA called Kema for more information. Mr. Hillery said that one of the stipulations of the business venture was that at some point he would have to travel to South Africa. Patient AA told him that she could not participate, but that she wanted him to be a part of the business venture.

12. In the spring of 2003, patient AA, who was 76 at that time, had some hospitalizations at Columbia Hospital in Milwaukee, Wisconsin that involved treatment for mental health issues. When patient AA was released from Columbia Hospital in mid-July, at some point in time, she was transferred from the Towers to the skilled nursing facility at St. John's.

13. Sometime during the spring of 2003, Mr. Hillery came into possession of a blank check (#5180) that belonged to patient AA. Mr. Hillery stated that patient AA gave him the check for use to travel in conjunction with the business venture in South Africa. He said that patient AA told him that he could use the check with the condition that the account that it was drawn from not be closed. At some point in time, patient AA's name was added to the signature line of the check.

14. On or about August 28, 2003, Mr. Hillery decided to take patient AA's blank check (#5180) to, JP, a lifelong friend. He said that he did not want the check coming directly to him because if his peers found out that he received money from a resident, they would be jealous. He also admitted that he wanted to hide his involvement with patient AA from St. John's because if St. John's found out, he would possibly get some type of reprimand or get in trouble for it.

15. Mr. Hillery took patient AA's blank check to JP's residence. He asked JP to write the date, June 1, 2003, on the check rather than the August 2003 date of his visit to JP's residence. Mr. Hillery could not remember the date that patient AA gave him the check, so the June 1, 2003, date was "pulled out" of his head. He had JP write her name on the check as the person to be paid; had her make the check out for \$69,000.00 and had her write the word "tuition" in the memo section of the

check. Mr. Hillery said he knew that there was at least \$69,000.00 in patient AA's account. Mr. Hillery and JP came to a consensus about writing the word "tuition" on the memo line of the check, because JP had never had a balance in her account of that amount. He said their intent was for the bank to believe that the check was being written to JP for tuition so that the bank would not challenge the check. After the check was completed, Mr. Hillery and JP went together to JP's bank where the check was deposited in JP's account. That same day, JP wrote a check back to Mr. Hillery from her account for \$66,500.00. JP kept \$2,500.00 of the \$69,000.00. Mr. Hillery said that JP kept \$2,500.00 because her account was in the negative and because she had asked him for a loan. Mr. Hillery did not cash JP's check right away. He took the check home and waited a couple of days before he deposited it. He wanted to wait until patient AA's check (#5180) for \$69,000.00 that JP deposited in her account had cleared.

16(a). The evening of Friday, September 5, 2003, the Corporate Security Officer at Patient AA's bank contacted St. John's Home. Mr. Neuser, the director of social services at St. John's, spoke with the Corporate Security Officer, who said she had some questions to ask of patient AA about a check. Mr. Neuser directed one of St. John's security employees to have Respondent, the night supervisor, put AA on the line with the Bank's Corporate Security Officer.

16(b). That night, Respondent did telephone the Bank's Corporate Security Officer and put a woman on the line to speak with her. The woman told the Bank's Corporate Security Officer the woman was the patient. The woman who Respondent put on the line was not patient AA.

16(c). Because of increased concerns about Respondent's involvement in AA's finances, the Bank's Corporate Security Officer wanted to speak with AA again. On September 9, 2003, Mr. Neuser put patient AA on the line with her and listed to the conversation. Immediately after speaking with the real patient AA, the Bank's Corporate Security Officer said there was a definite difference between the voice of the person she had spoken to on September 5 and AA's voice. She said the first person's voice was much younger and stronger. There was no changes in patient AA's condition over the four days which would cause her to sound differently.

16(d). On September 21, 2003, AA was interviewed by Detective Gorman of the Milwaukee Police Department. During that interview, Patient AA said that in the last week of August 2003, she noticed that her personal check (#5180) was missing from the top drawer of her television stand. When shown the check (#5180) that JP had deposited in her (JP's) bank account, patient AA stated that the check appeared to be a copy of her check. Patient AA said that she did not know anyone named JP; that she certainly did not write the date, JP's name (on the payee line) or the word "tuition" on the check. She did not recall signing the check, but said it appeared to be her signature on the signature line.

17. In September 2003, Mr. Hillery was suspended from employment at St. John's because of his involvement with patient AA's check. In November 2003, Mr. Hillery's employment at St. John was terminated.

18. In October 2003, Mr. Hillery pursued his interest in the South Africa business venture. After he explained to Paul Kema that he could not travel to South Africa, Mr. Kema told him he could get a power of attorney to represent him there. Mr. Kema gave Mr. Hillery the name of an attorney. Mr. Hillery was asked to complete and submit several documents. Mr. Hillery contacted the attorney by e-mail. The attorney asked Mr. Hillery to send all of the business documents to him, which Mr. Hillery did. The attorney's reply back to Mr. Hillery was that he would represent him; that Mr. Hillery had to sign the power of attorney, and also that Mr. Hillery had to pay him \$132,000 in fees and an additional \$25,000 for stamp duty fees. Mr. Hillery said that he did not have that kind of money. Mr. Hillery then called Paul Kema and told him that he received the letter from the attorney and that the attorney was asking for the fees. Mr. Kema told Mr. Hillery not to worry about it and that they had investors for that. Later that week, Mr. Hillery received an express mail delivery that contained a cashier's check for \$45,000.00 made out to him. He called Mr. Kema and told him that he had received the check. Mr. Kema said that the check was from one of their investors and that Mr. Hillery needed to wire that amount to the attorney.

19. At some point in time, Mr. Hillery then deposited the \$45,000.00 check that he received from the attorney into his bank account. His account went from \$15,000 to \$60,000. Mr. Hillery instructed the bank not to wire the funds to the attorney until the check had cleared. Mr. Hillery said that the bank must have received notification that the check was a good check, which furthered his excitement. The bank wired the money to the attorney. A couple of days after that the check came back as being altered, but the funds had already been transferred from Mr. Hillery's account. Mr. Hillery said his account went from \$60,000 to a negative \$30,000. He said that he never recovered the \$15,000 that was drawn from his bank account.

20. In November of 2003, JP was contacted by the Milwaukee Police Department regarding her involvement with patient AA's check. Mr. Hillery agreed to go with JP to the police department. When they got to the police department, JP was taken to the back area. Mr. Hillery was asked to come back at noon. When Mr. Hillery returned to the station at noon, he was arrested.

21. As a result of Mr. Hillery's conduct relating to the deposit of patient AA's check into JP's bank account, he was charged in Milwaukee County Wisconsin Circuit Court, case number 2003CF006418, with one count of being a party to a Crime of Forgery-Uttering, a Class H Felony in violation of Wis. Stats. §943.38 (2).

22. On March 21, 2005, Mr. Hillery pled guilty to and was convicted of issuance of a worthless check, a Class A Misdemeanor, relating to the \$45,000.00 cashier's check that he received, in conjunction with the South Africa business venture, which he deposited in his bank account. Mr. Hillery was ordered to serve 18 months on probation.

23. On or about July 27, 1999, Mr. Hillery was convicted of 3 counts of being party to the crime of receiving stolen property. The crimes occurred in 1993 and 1994.

24. Count II of the Complaint was withdrawn by the Division of Enforcement prior to and at the time of the hearing held in this matter.

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 directing JP to write her name as the payee on patient AA's check (#5180), in the amount of \$69,000.00; by directing JP to deposit patient AA's check into JP's bank account, and by directing JP to write a check to him for \$66,500.00 from the account that patient AA's check had been deposited in, as described in Findings of Fact 13-15 herein, attempted to obtain \$69,000.00 from patient AA's bank account without her consent, in violation of Wis. Adm. Code § N 7.04 (12) and Wis. Stats. §441.07 (1) (d).

3. Respondent, by directing JP to write her name on patient AA's check (#5180) as payee; to write \$69,000 on the check; to write the June 1, 2003, date on the check; to write the word "tuition" on the memo line of the check, and to deposit the check into JP's bank, as described in Findings of Fact 15 herein, aided and abetted the commission of a forgery within the meaning of Wis. Stat., § 939.05.

4. By aiding and abetting JP's violation of Wis. Stats., § 943.38, Mr. Hillery violated a law that substantially relates to the practice of professional and practical nursing, in violation of Wis. Admin. Code §N 7.04 (1).

5. Mr. Hillery, by having been convicted of issue of a worthless check, as described in Finding of Fact 22 herein, violated Wis. Stats. § 943.24 (1), a law that substantially relates to the practice of professional and practical nursing, in violation of Wis. Admin. Code §N 7.04 (1).

ORDER

NOW, THEREFORE, IT IS ORDERED that the licenses of Sean L. Hillery to practice as a Registered Nurse (#137886) and as a Licensed Practical Nurse (#301752) be, and hereby are, **REVOKED**.

IT IS FURTHER ORDERED that pursuant to s. 440.22 Wis. Stats., the cost of this proceeding shall be assessed against Respondent.

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 August 2, 2005. Respondent's Answer was filed on September 1, 2005. The hearing was held on July 26-27, 2006 and August 3, 2006. Closing arguments and supplemental documents were filed on September 21, 2006. Atty. John R. Zwiieg appeared in this matter on behalf of the Division of Enforcement. Atty. Anna M. Pepelnjak appeared on behalf of the Respondent, Sean L. Hillery.

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.

943.24 Issue of worthless check. (1) Whoever issues any check or other order for the payment of not more than \$2,500 which, at the time of issuance, he or she intends shall not be paid is guilty of a Class A misdemeanor.

943.38 Forgery. (1) Whoever with intent to defraud falsely makes or alters a writing or object of any of the following kinds so that it purports to have been made by another, or at another time, or with different provisions, or by authority of one who did not give such authority, is guilty of a Class H felony:

(a) A writing or object whereby legal rights or obligations are created, terminated or transferred, or any writing commonly relied upon in business or commercial transactions as evidence of debt or property rights; or

...

(2) Whoever utters as genuine or possesses with intent to utter as false or as genuine any forged writing or object mentioned in sub. (1), knowing it to have been thus falsely made or altered, is guilty of a Class H felony.

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:

(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;

(12) Obtaining or attempting to obtain anything of value from a patient without the patient's consent;

III. Summary of Evidence

Mr. Hillery has been a Registered Nurse since April 24, 2001. From September 11, 1998 to April 20, 2003, he was also licensed as a Licensed Practical Nurse.

In the fall of 1998, Mr. Hillery started employment at St John's Home of Milwaukee ("St. John's") as a Licensed Practical Nurse. Except for a few days in 1998, Mr. Hillery was employed at St. John's on a continuous basis until September of 2003. At that time, St. John's was comprised of different living areas for residents and patients. The facility

consisted of a nursing home, which was located on the first two floors of the complex; an assisted living center, which was located on the third floor of the building, and the Tower Apartments ("Towers"), a ten-story independent living center for residents.

In the fall of 1999, Mr. Hillery met patient AA who, at that time, was 73. Patient AA was living in the Towers. At that time, Mr. Hillery's duties consisted of providing patient care and passing medications in the nursing home. The nursing staff at the nursing home, including Mr. Hillery, also provided emergency services to the residents who lived in the Towers.

From 1999, when Mr. Hillery met patient AA, until the spring of 2001 when he became a Registered Nurse, Mr. Hillery's contact with patient AA was limited. He saw Patient AA when she would walk through the nursing home and when she would walk over to talk with him.

When Mr. Hillery became a Registered Nurse in 2001, his job duties at St. John's changed. He was immediately promoted to supervisor at the nursing home. Mr. Hillery testified that as a supervisor, he had freedom to roam basically throughout the entire facility. As the second shift nursing supervisor, he was responsible for handling nursing matters at the nursing home and the Towers. If there were calls in the Towers; if an employee was injured, whether it was nursing or not, or the CBRF had anything that an RN needed to respond to it was Mr. Hillery's responsibility to handle those matters.

As a result of his additional freedom and responsibilities, Mr. Hillery said that he encountered patient AA more frequently. He saw her in the dining room on the third floor of the facility. Sometimes, he would sit with her to eat there. He would also sit with her if she sat in the CBRF center, and she would visit him on the floor.

Mr. Hillery further testified as follows regarding his relationship with patient AA:

Q. Okay. Well, what did you do with Ms. Armstrong?
What was it that you did with her other than taking her to appointments and running some errands?

A. I treated her like she was the mother that I didn't have. That's -- if I can characterize that and --

Q. So does that mean you bought her gifts?
A. Yes.

Q. Okay.

A. I've purchased food for her. I purchased her gifts. I celebrated her birthday. She was introduced to my family. She was expecting to see -- at the time that I left my wife was pregnant so she was anticipating seeing our newborn, so our family would come in after she was in the nursing home and spend time with her.

Q. So that was after she was in the nursing home?
A. Well, my family would visit, yes.

In reference to his involvement with patient AA's finances, Mr. Hillery testified as follows [Tr. p. 103-111; 297-319; 395-398]:

Q. Prior to the time she was in the nursing home
Did you become involved in any way with her finances?

A. Yes.

Q. And how did that happen?

A. The encounter was I was going to Cardinal Stritch for my MBA. Part of my curriculum is that all MBA students had a laptop. That was part of your books and everything. I had introduced Mrs. Armstrong to the Internet, like showed her how to work it and I set up an e-mail account with her under my AOL screen name which she used my laptop under the dial-up services in her apartment. So what transpired was she received an e-mail from a guy named Paul Kema soliciting business partners for a construction business in South Africa.

Q. Now, let me ask you a few questions here. Do you know when that happened?

A. This is spring of 2003.

Q. Okay. And -- okay. Go ahead then.

A. Okay. When she got the e-mail, I'm paraphrasing, but in the e-mail it talked about soliciting business partners. We don't need any money from you or any -- you know, we're not gonna ask you for any money, but at the least give us a call and we can discuss any questions you have. So we did that.

Q. So you called South Africa?

A. Yes.

Q. You say we. The two of you together?

A. Yes.

Q. Okay.

A. So we asked this person -- I grilled this person. He had to answer -- you know, everything was fine and I guess the thing about it was he said that he didn't need any money from us so we were like basically what do we have to lose? But one of the things Mrs. Armstrong said that she was gonna have one of her -- you know, someone look into it. When I saw her a later date, she thought she -- she told me that she felt that it was something that could come to pass and -- but one of the stipulations was that at some point I needed to

travel to South Africa and one of the things I told Mrs. Armstrong is that that's something that I couldn't just up and do, so as being involved with her finances, that's when she told me that she couldn't and that was something that she would want me to do.

Q. Was to travel to South Africa?

A. Well, to be a part of this business venture.

Q. Okay. Is there any kind of document in existence anywhere that supports what you're saying about Ms. Armstrong's involvement in this?

A. No, because the laptop unit, whenever I would get e-mails, I'd save it to the hard drive. When I stopped going to Cardinal Stritch, I had to turn in the computer, so everything that I would save correspondence-wise was on that laptop. Now, once I -- well, I'm rambling. Sorry.

Q. Okay. So that's why there's no documents. And you never printed -- I mean, laptops hook up to printers. You never printed any of those documents?

A. I didn't feel I had a reason to.

Q. But you're talking about a business deal that you're going to enter into and wasn't there -- weren't you -- wasn't it suggested to you that you could make millions of dollars from this business deal?

A. Yes.

Q. Yeah. And you never saw a need to preserve any of those e-mails that documented the transactions?

A. I didn't see a reason. He's -- you know, they're not asking for anything. I -- you know, if this guy was asking me for funds, then I would have kept the paper trail and printed it, but this guy isn't asking us for anything. He's just asking for us to be a part of it.

Q. Right. And why did he say that you could have the potential of making millions of dollars without investing anything?

A. They were soliciting business partners.

Q. Why would they do that? People don't give away

millions of dollars for nothing.

A. That's in hindsight. I see what you're saying. But at the time for what we asked him I had nothing to lose. I mean, all these questions I can ask in hindsight, but --

According to Mr. Hillery, sometime during the spring of 2003, patient AA gave him a blank signed check (#5180) for his use to travel to South Africa in conjunction with the business venture. He said that she told him that he could use it with the condition that the account that it was drawn from not be closed. He said that at first he did not intend to use the check. He put it in his safe at home and "just sat on it".

Mr. Hillery further testified that patient AA, who was 76 at that time, had some hospitalizations at Columbia sometime in the spring of 2003, and that he was aware that the hospitalizations involved treatment for mental health issues. When patient AA was released from Columbia Hospital in mid-July, at some point in time, she was transferred from the Towers to the skilled nursing facility at St. John's. It was after patient AA was admitted to the skilled nursing facility that Mr. Hillery decided to do something with the check. Mr. Hillery testified as follows:

Q. All right. What happened that led you to do something with the check?

A. Because when she came into the nursing home and I started getting correspondence from the guy from South Africa, that's when I decided to utilize the check.

Q. Now, do you have copies of any correspondence you got from the guy in South Africa during August of 2003?

A. I don't know if any things are stated that -- because most of the documents that I have are the ones where he had me signing documents through the power of attorney.

Q. Right. And those were in October, weren't they?

A. Correct.

Q. Yeah. When did you stop your MBA program?

A. I think probably I want to say the fall of -- it was during 2003.

Q. All right. So did you still have your laptop in August?

A. I believe -- I couldn't say. I don't remember when I turned that stuff back in.

Q. Okay. So you were receiving correspondence from this fellow in South Africa and what did you need

the money for?

A. Just basically traveling. I didn't know how long I was going to be there. I didn't know where I was going to stay. So when I decided to utilize the check, it was -- you know, she gave me one check and since I didn't know what I was getting into I -- my decision was to utilize the max amount that she allowed me to because there was no going back.

Q. All right. Why wasn't there any going back? Didn't she have a checkbook with more checks in it?

A. No. Because once Ms. Armstrong came into the nursing home, yes, her health did start to decline.

Q. So why couldn't you have gotten another check from her?

A. Because, once again, when she got into the nursing home, her health started to decline.

Q. Was she physically unable to write her signature?

A. No. She was able to write her signature.

Q. So then I'm still not clear. I'm asking you -- I understand that her health was declining, but how did that stop you from asking her for another check if you wanted one?

A. Because when she came into the nursing home, I didn't want to ask her for -- basically ask her for anything else when she had already given me something.

Q. So -- so you made the check out for the maximum amount in the account rather than making it out for a lesser amount and then having to go back to her and ask her for an additional check?

A. Yes.

Q. Okay. So obviously you didn't just put yourself in as payee on the check, did you?

A. I don't understand.

Q. Well, you said she gave you the check for you to use which would suggest that it was her expectation that -- that the check would be made out to you, isn't it?

A. No, because it was one of our discussions earlier in the year when she gave me the check that I had initially told her I couldn't accept this from her and things that we talked about were how much do you need and I told her that if my peers found out about it, you know, that jealousy would set in --

Q. Okay.

A. -- about her giving me anything like that.

Q. So it was just jealousy. You weren't concerned that it was a violation of the policies of the facility where you were working for you to accept a check for thousands of dollars from one of the residents?

A. Well, under the new model of care that was her right to do that.

Q. Okay.

On or about August 28, 2003, Mr. Hillery decided to take patient AA's blank check (#5180) to, JP, a lifelong friend. He said that he did not want the check coming directly to him from patient AA because if his peers found out that he received money from a resident, they would be jealous. He also admitted that he wanted to hide his involvement with patient AA from St. John's because if St. John's found out, he would possibly get some type of reprimand or get in trouble for it. He felt that the climate at St. John's was such that the administration would look down at him accepting a check from patient AA. He said that he never thought that he would be terminated, but that it was a concern.

When asked why he took the check to JP, Mr. Hillery testified that if he gave the check to someone, it had to be someone that he could trust would not take the money and run off with it. He said that he felt he could trust JP with anything. Mr. Hillery took the check to JP's residence. He asked JP to write the date, June 1, 2003, on the check rather than the August 2003 date of the visit to her residence. Mr. Hillery said that he could not remember the date that patient AA gave him the check, so the June 1, 2003, date was "pulled out" of his head. He had JP write her name on the check as the person to be paid. When asked how he arrived at \$69,000.00, Mr. Hillery said that patient AA had instructed him in the spring not to close the account out by going over a certain amount. He said that he knew there was at least \$69,000 in patient AA's account. When asked why the word "tuition" was written in the memo section of the check, Mr. Hillery testified that he and JP came to a consensus about writing that on the check, because JP had never had money in her account in that amount. He said that their intent was for the bank to believe that the check was being written to JP for tuition so that the bank would not challenge the check. After the check was completed, Mr. Hillery and JP went together to JP's bank where it was deposited [Exhibit 5]. That same day, JP wrote a check back to Mr. Hillery from her account for \$66,500.00. JP kept \$2,500.00 of the \$69,000.00. According to Mr. Hillery, JP kept \$2,500.00 because her account was in the negative and because she had asked him for a loan. Mr. Hillery said that he did not cash JP's check right away. He took the check home and waited a couple of days before he deposited it. He said that he had to wait until the \$69,000.00 check that he had given to JP cleared.

On or about September 5, 2003, the Corporate Security Officer at patient AA's bank contacted patient AA about the check. Patient AA denied knowledge of JP and denied giving her authorization to deposit the check. In September 2003, Mr. Hillery was suspended from employment at St. John's because for his involvement with patient AA. In November 2003, Mr. Hillery's employment at St. John was terminated. Tr. p. 333-335.

In October 2003, Mr. Hillery continued to pursue the South Africa business venture. Mr. Hillery testified that after he explained to Paul Kema that he could not travel to South Africa, Mr. Kema told him that he could get a power of attorney to represent him there. Mr. Kema gave Mr. Hillery the name of the attorney. Mr. Hillery was asked to complete and submit

several documents. He contacted the attorney by e-mail. The attorney asked Mr. Hillery to send all of the business documents to him, which Mr. Hillery did. The attorney's reply back to Mr. Hillery was that he would represent him; that Mr. Hillery had to sign the power of attorney, and also that Mr. Hillery had to pay him \$132,000 in fees and an additional \$25,000 for stamp duty fees. Mr. Hillery said that he did not have that kind of money.

Mr. Hillery then called Paul Kema and told him that he received the letter from the attorney and that the attorney was asking for the fees. Mr. Kema told Mr. Hillery not to worry about it and that they had investors for that. Later that week, Mr. Hillery received an express mail delivery that contained a check for \$45,000.00 made out to him. He called Mr. Kema and told him that he had received the check. Mr. Kema said that the check was from one of their investors and that Mr. Hillery needed to wire that amount to the attorney. Mr. Hillery then deposited the check in his bank account. He said that his account went from \$15,000 to \$60,000. Mr. Hillery said that he instructed the bank not to wire the funds to the attorney until the check had cleared. He said that the bank must have received notification that the check was a good check and wired the money. A couple of days after that the check came back as being altered, but the funds had already been transferred from Mr. Hillery's account. Mr. Hillery said his account went from \$60,000 to a negative \$30,000. He said that he never recovered his \$15,000. Tr. p. 335-341; Exhibit 12, 13.

In November of 2003, JP was contacted by the Milwaukee Police Department regarding her involvement with patient AA's check. Mr. Hillery agreed to go with JP to the police department. When they got to the police department, JP was taken to the back area. Mr. Hillery was asked to come back at noon. When Mr. Hillery returned to the station at noon, he was arrested.

As a result of Mr. Hillery's conduct relating to the deposit of patient AA's check into JP's bank account, he was charged in Milwaukee County Wisconsin Circuit Court, case number 2003CF006418, with one count of being a party to a Crime of Forgery-Uttering, a Class H Felony in violation of Wis. Stats. §943.38 (2).

On March 21, 2005, Mr. Hillery pled guilty to and was convicted of issuance of a worthless check, a Class A Misdemeanor, in conjunction with the \$45,000.00 cashier's check from the South African attorney that he deposited in his bank account. Mr. Hillery was ordered to serve 18 months on probation.

IV. Discussion of Evidence

Count I

The Division of Enforcement alleges the following in its Complaint:

6. On August 28, 2003, Respondent went into patient AA's bedroom and took a blank check from AA's dress drawer without AA's permission.

7. Without AA's consent, Respondent wrote the check out to JP, a personal friend of Respondent's for \$69,000. Respondent signed AA's name at the bottom of the check and had JP indicate in the memo portion that the check was for "tuition". JP then deposited the check into her own checking account.

8. On or about September 5, 2003, JP wrote Respondent a check from her personal checking account for \$66,500 and kept \$2,500 of the \$69,000 as payment for conspiring with Respondent. Respondent subsequently presented the \$66,500 check to his bank to be cashed.

9. Respondent, by obtaining a thing of value from a patient without the patient's consent, has violated Wis. Adm. Code § N7.04 (12), which subjects the Respondent to discipline pursuant to Wis. Stats. § 441.07 (1) (d).

Mr. Hillery denies that the violation occurred.

The evidence presented establishes that Mr. Hillery attempted to obtain \$69,000.00 from patient AA without the patient's consent, in violation of Wis. Adm. Code § N7.04 (12).

In the fall of 1998, Mr. Hillery started employment at St John's Home of Milwaukee ("St. John's") as a Licensed Practical Nurse. At that time, St. John's was comprised of different living areas for residents and patients. The facility consisted of a nursing home, which was located on the first two floors of the complex; an assisted living center, which was located on the third floor of the building, and the Tower Apartments ("Towers"), a ten-story independent living center for residents.

In the fall of 1999, Mr. Hillery met patient AA who, at that time was 73. Patient AA was living in the Towers. At that time, Mr. Hillery's duties consisted of providing patient care and passing medications in the nursing home. The nursing staff at the nursing home, including Mr. Hillery, also provided emergency services to the residents who lived in the Towers.

From 1999, when Mr. Hillery met patient AA, until the spring of 2001 when he became a Registered Nurse, Mr. Hillery's contact with patient AA was limited. He saw Patient AA when she would walk through the nursing home and when she would walk over to talk with him.

When Mr. Hillery became a Registered Nurse in 2001, his job duties at St. John's changed. He was immediately promoted to supervisor at the nursing home. Mr. Hillery testified that as a supervisor, he had freedom to roam basically throughout the entire facility. As the second shift nursing supervisor, he was responsible for handling nursing matters at the nursing home and the Towers.

As a result of his additional freedom and responsibilities, Mr. Hillery encountered patient AA more frequently. He saw her in the dining room on the third floor of the facility. Sometimes, he would sit with her to eat there. He would also sit with her if she sat in the CBRF center, and she would visit him on the floor. Mr. Hillery said that he treated patient AA "like she was the mother" that he didn't have. He took her to appointments; ran errands for her; purchased food for her; purchased gifts for her and celebrated her birthday. At some point in time, Mr. Hillery introduced his family to patient AA, and on occasion his family would spend time with patient AA at the nursing home.

At some point in time, in the spring of 2003, Mr. Hillery became involved with patient AA's finances. Using his laptop computer, Mr. Hillery introduced patient AA to the Internet, showed her how to use it and set up an e-mail account with her under his AOL screen name. Patient AA used Mr. Hillery's laptop under the dial-up services in her apartment. Mr. Hillery said that one day patient AA received an e-mail from a person named Paul Kema soliciting business partners for a construction business in South Africa. Mr. Hillery said that Kema's e-mail stated that Kema was not asking for any money and that she should give him a call to discuss any questions she had. Mr. Hillery said he and patient AA called Kema for more information. Mr. Hillery said that one of the stipulations of the business venture was that at some point he would have to travel to South Africa. He said that patient AA told him that she could not participate, but that she wanted him to be a part of the business venture.

Sometime during the spring of 2003, Mr. Hillery came into possession of a check that belonged to patient AA. According to Mr. Hillery, patient AA gave him the check for use to travel in conjunction with the business venture in South Africa. He said that she told him that he could use it with the condition that the account that it was drawn from not be closed. He said that at first he did not intend to use the check. He put it in his safe at home and "just sat on it".

Mr. Hillery further testified that patient AA, who was 76 at that time, had some hospitalizations at Columbia sometime in the spring of 2003, and that he was aware that the hospitalizations were for mental health issues. When patient AA was released from Columbia Hospital in mid-July, at some point in time, she was transferred from the Towers to the skilled nursing facility at St. John's. It was after patient AA was admitted to the skilled nursing facility that Mr. Hillery decided to do something with the check.

On or about August 28, 2003, Mr. Hillery decided to take patient AA's check to, JP, a lifelong friend. He said that he did not want the check coming directly to him because if his peers found out that he received money from a resident, they would be jealous. He also admitted that he wanted to hide his involvement with patient AA from St. John's because if St.

John's found out, he would possibly get some type of reprimand or get in trouble for it. He felt that the climate at St. John's was such that the administration would look down at him accepting a check from patient AA. He said that he never thought that he would be terminated, but that it was a concern.

When asked why he took the check to JP, Mr. Hillery testified that if he gave the check to someone, it had to be someone that he could trust would not take the money and run off with it. He said that he felt he could trust JP with anything. Mr. Hillery took the check to JP's residence. He asked JP to write the date, June 1, 2003, on the check rather than the August 2003 date of the visit to her residence. Mr. Hillery said that he could not remember the date that patient AA gave him the check, so the June 1, 2003, date was "pulled out" of his head. He had JP write her name on the check as the person to be paid. When asked how he arrived at \$69,000.00, Mr. Hillery said that patient AA had instructed him in the spring not to close the account out by going over a certain amount. He said that he knew there was at least \$69,000 in the account. When asked why the word "tuition" was written in the memo section of the check, Mr. Hillery testified that he and JP came to a consensus about writing that on the check, because JP had never had money in her account in that amount. He said that their intent was that the bank would believe that the check was being written to her for tuition so they (the bank) would not challenge the check. After the check was completed, Mr. Hillery and JP went together to JP's bank where it was deposited [Exhibit 5]. That same day, JP wrote a check back to Mr. Hillery from her account for \$66,500.00. JP kept \$2,500.00 of the \$69,000.00. According to Mr. Hillery, JP kept \$2,500.00 because her account was in the negative and because she had asked him for a loan. Mr. Hillery said that he did not cash JP's check right away. He took the check home and waited a couple of days before he deposited it. He said that he had to wait until the \$69,000.00 check that he had given to JP cleared.

On or about September 5, 2003, the Corporate Security Officer at patient AA's bank contacted patient AA about the check. Patient AA denied knowledge of JP and denied giving her authorization to deposit the check. In September 2003, Mr. Hillery was suspended from employment at St. John's because for his involvement with patient AA. In November 2003, Mr. Hillery employment at St. John was terminated. Tr. p. 333-335.

As a result of Mr. Hillery's conduct relating to the deposit of patient AA's check into JP's bank account, he was charged in Milwaukee County Wisconsin Circuit Court, case number 2003CF006418, with one count of being a party to a Crime of Forgery-Uttering, a Class H Felony in violation of Wis. Stats. §943.38 (2).

In September 2003, Mr. Hillery was suspended from employment at St. John's because of his involvement with patient AA. In November 2003, Mr. Hillery employment at St. John was terminated.

Mr. Hillery admits that sometime during the spring of 2003, he came into possession of a check that belonged to patient AA; that he asked JP to write her name on the check as payee; that he asked JP to write June 1, 2003, on the check; that he asked JP to write the word "tuition" in the memo section on the check and that he asked JP to deposit the check in her account. He also admits that JP wrote a check out to him from her checking account in the amount of \$66,500 after she deposited patient AA's check in her account and that JP retained \$2,500 of the \$69,000. He denies that he signed patient AA's signature on the check and he denies that he did not have patient AA's consent to write the check for \$69,000.00.

In reference to the signature on patient AA's check, the evidence does not establish who wrote patient AA's signature on the check. In a statement given to a Milwaukee Police Department Detective, William Gorman, in September of 2003, patient AA stated that the signature appeared to look like her signature, but she did not recall signing the check. Tr. p. 153; Exhibit 8.

In reference to whether Mr. Hillery received consent from patient AA to make the check out for \$69,000.00, in my opinion, the answer is no. Mr. Hillery's testimony is not credible. First, other than Mr. Hillery's statement, there is no evidence that patient AA authorized Mr. Hillery to make the check out for \$69,000.00. Obviously, Mr. Hillery has the most to gain from a finding that patient AA gave him consent to write the check for \$69,000.00. He testified that, although patient AA gave the money to him as a loan, there is no written agreement about the terms of the loan, the amount, interest due or repayment arrangements. In fact, according to Mr. Hillery, there was nothing in writing about the loan, and there is nothing in writing with a date from the spring of 2003 about the South Africa venture.

Second, patient AA is deceased. The only statements offered into evidence relating to patient's AA authorization to write the check were contained in a statement prepared by a Milwaukee Police Department Detective, William Gorman, who

interviewed patient AA a little over a month after the check was deposited in JP's account. Based upon Detective Gorman's statement, patient AA said that in the last week of August in 2003, she noticed that her personal check (#5180) was missing from the top drawer of her television stand. When shown the check (#5180) that JP had deposited in her (JP's) bank account, patient AA stated that the check appeared to be a copy of her check. In addition, patient AA said that she did not know anyone named JP; that she certainly did not write the date, JP's name (on the payee line) or the word "tuition" on the check. [Exhibit 8]

Third, in my opinion, the amount of the check raises serious questions regarding Mr. Hillery's credibility. It is credible to believe patient AA would have given Mr. Hillery a check for \$69.00, for whatever reason. A check for \$690.00, possibly. A check for \$6,900.00, unlikely. A check for \$69,000.00, incredible. In this case, the amount of the check makes it incredible to believe that patient AA would have given consent for such a large amount.

Fourth, at no time during the time period that Mr. Hillery claimed he needed money to travel to South Africa, did he attempt to find any information about the cost of traveling to South Africa, the cost of lodging or any related travel expense.

Fifth, although the Board considered Mr. Hillery 1999 convictions for receiving stolen property/party to a crime in conjunction with his application for a Registered Nurse license, in my opinion, those convictions are relevant to and have been considered in assessing his credibility in this proceeding.

Finally, Mr. Hillery's testimony is incredible because of his conduct surrounding the deposit of the check. If patient AA had given consent for Mr. Hillery to write the check for \$69,000.00, why all the secrecy and deception? Why didn't he tell his wife the good news that patient AA had given him \$69,000.00 for a business venture? Why didn't he make the check out to himself and deposit it in his bank, instead of asking JP to make the check out and deposit it in her bank? Why did he ask JP to write June 1 on the check instead of August 28, the date when the check was deposited? Why did he ask JP to write "tuition" on the memo section of the check when in fact, the check was not for tuition? Why did JP keep \$2,500 of the \$69,000.00? Why was there a sense of urgency to deposit the check after patient AA was admitted to the nursing home following her hospitalizations involving her mental status? In my opinion, the reason for the secrecy and deception is that Mr. Hillery knew that patient AA did not give him consent to write a check for \$69,000.00. His testimony is designed primarily to further conceal his deceptions.

Count II

Count II of the Complaint was withdrawn by the Division of Enforcement prior to and at the time of the hearing held in this matter.

Count III

The Division of Enforcement alleges the following in Count III of its Complaint:

12. Respondent's conduct, as set out in paragraphs 5 through 6 above, violated Wis. Stats. §943.38 (2) (Forgery-Uttering), a class H felony.

13. Wis. Stats., §943.38 (2) is a law substantially related to practice under Respondent's license.

14. Respondent, by having violated a law substantially related to practice under his license, has committed misconduct or unprofessional conduct as defined by Wis. Adm. Code §N 7.04 (1), and is subject to discipline pursuant to Wis. Stats., §441.07 (1) (d).

Mr. Hillery denies that the violation occurred. The evidence presented establishes that the violation occurred.

In 2003, Wis. Stats., § 943.38 read as follows:

943.38 Forgery. (1) Whoever with intent to defraud falsely makes or alters a writing or object of any of the following

kinds so that it purports to have been made by another, or at another time, or with different provisions, or by authority of one who did not give such authority, is guilty of a Class H felony:

(a) A writing or object whereby legal rights or obligations are created, terminated or transferred, or any writing commonly relied upon in business or commercial transactions as evidence of debt or property rights; or

...

(2) Whoever utters as genuine or possesses with intent to utter as false or as genuine any forged writing or object mentioned in sub. (1), knowing it to have been thus falsely made or altered, is guilty of a Class H felony.

In my opinion, by writing her name on patient AA's check as payee; by writing the check out for \$69,000.00; by writing the June 1, 2003, date on the check; by writing the word "tuition" on the memo line of the check, and by depositing the check in her bank account, JP committed forgery, within the meaning of Wis. Stats., § 943.38. Certainly, the information written by JP on the check was false; written so that it purported to have been written by patient AA, and written with the intent to deceive the bank. Mr. Hillery, by directing JP to write false information on the check and to deposit it, aided and abetted the commission of the forgery within the meaning of Wis. Stat., § 939.05.

By aiding and abetting JP's violation of Wis. Stats., § 943.38, Mr. Hillery violated a law that substantially relates to the practice of professional and practical nursing in violation of Wis. Admin. Code §N 7.04 (1). As part of the practice of nursing, nurses routinely receive access to personal and financial patient information. Even more so in nursing home settings, where nurses have easy access to personal and financial patient information. In this case, Mr. Hillery was employed in a nursing home where patients rely more heavily on the advice and guidance given by the nursing staff; where patients are more trusting of caregivers, and where many patients have limited access to family and friends. Given the opportunity to continue practicing nursing, Mr. Hillery would have ample opportunity to engage in similar misconduct. In reference to character traits, the evidence reflects that he is dishonest and cannot be trusted.

Count IV

The Division of Enforcement alleges the following in Count IV of its Complaint:

15. As a result of Respondent's August 28, 2003 conduct, Respondent was charged in Milwaukee County Wisconsin Circuit Court case number 2003CF006418 with one count of being a party to a Crime of Forgery-Uttering, a Class H Felony in violation of Wis. Stats. §943.38 (2).

16. On March 21, 2005, as a result of a plea agreement, the charge of Forgery-Uttering was amended to Issue of Worthless Checks (<=\$2500), a Class A misdemeanor in violation of Wis. Stats., §943.24 (1), and Respondent pled no contest and was found guilty and convicted of this amended count.

17. Wis. Stats., §943.24 (1) is a law substantially related to practice under Respondent's license.

18. Respondent, by having violated a law substantially related to practice under his license, has committed misconduct or unprofessional conduct as defined by Wis. Adm. Code §N 7.04 (1), and is subject to discipline pursuant to Wis. Stats., §441.07 (1) (d).

Mr. Hillery denies that the violation occurred. The evidence presented establishes that the violation occurred.

Wisconsin Stats., § 943.24 (1) reads as follows:

943.24 Issue of worthless check. (1) Whoever issues any check or other order for the payment of not more than \$2,500 which, at the time of issuance, he or she intends shall not be paid is guilty of a Class A misdemeanor.

In my opinion, Mr. Hillery's conviction of issuance of a worthless check substantially relates to the practice of professional and practical nursing. His conduct in issuing a check with the intent that it not be paid reflects that he is dishonest

and cannot be trusted. As noted above, nurses routinely receive access to personal and financial patient information. Even more so in nursing home settings, where nurses have easy access to personal and financial patient information. In this case, Mr. Hillery was employed in a nursing home where patients rely more heavily on the advice and guidance given by the nursing staff; where patients are more trusting of caregivers, and where many patients have limited access to family and friends. Given the opportunity to continue practicing nursing, Mr. Hillery would have ample opportunity to engage in similar misconduct.

V. Appropriate Discipline

Having found that Mr. Hillery violated statutes and rules relating to the practice of professional 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 revoke, limit, suspend or deny renewal of a license of a registered nurse or a licensed practical nurse, or reprimand a registered nurse or licensed practical nurse, if the board finds that the person has engaged in 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 Mr. Hillery's license to practice as a Registered Nurse, as well as his license to practice as a Licensed Practical Nurse be revoked. Mr. Hillery recommends that this matter be dismissed.

The Administrative Law Judge recommends that Mr. Hillery's license to practice as a registered nurse and his license to practice as a licensed practical nurse be revoked, as recommended 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. Mr. Hillery has shown that he is incapable of practicing nursing in a manner that safeguards the interest of the public. Any measure short of revocation of his licenses 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).

EXPLANATION OF VARIANCE

Upon review and consideration of the Respondent's Objections to the Proposed Decision and the Complainant's Response to the Objections, the Board of Nursing has varied the findings in paragraph 16 of the Proposed Decision. The Respondent objected to the findings in paragraph 16 on the basis that there was conflicting testimony on the issue of AA's consent. The Respondent maintained that due to the conflict in the testimony, the ALJ misconstrued the record and made erroneous findings on the issue of consent. *Respondent's Objections to Proposed Decision*, pp. 1-4. The Respondent contended that the record evidence supported the ALJ's conclusions, but recommended that the findings in paragraph 16 could be corrected by adopting revised findings which were supported by evidence in the hearing record. *Complainant's Response to Respondent's Objections to Proposed Decision*, pg. 3.

The Board of Nursing has adopted the recommended revised findings regarding the issue of AA's consent to the withdrawal of the funds. The revised findings in paragraphs 16 (a) through (c) reflect the testimony of Mr. Neuser, the Director of Social Services at St. John's Home and statements by Ms. Hopson, the Bank One Corporate Security Officer. Of particular relevance is the testimony by Mr. Neuser about the reaction of Ms. Hopson during a second interview of AA. Ms. Hopson noticed a distinct difference in the voice of the patient AA; the person she had previously interviewed had a much stronger and younger voice, yet, there was no change in AA's condition during the four days between the two interviews. The only viable explanation for this difference was that the Respondent had put someone other than AA on the phone during the first interview to talk to Ms. Hopson to confirm the legitimacy of the check. The revised findings in paragraph 16 (d) also reflect the statements by AA to Detective Gorman wherein AA stated that she did not fill out the check or recall signing it. The revised findings clarify the testimony of the various witnesses, show their consistency, and support the legal conclusion that AA did not consent to the withdrawal of the funds.

Prior to adopting the revised findings, the Board inquired of Ruby Jefferson-Moore, the Administrative Law Judge who conducted the hearing and prepared the Proposed Decision, as to her opinion on the credibility of the witnesses and record evidence. The Board of Nursing determined that the revised findings were based upon credible evidence in the record. Accordingly, the Board modified the Proposed Decision by replacing the original proposed paragraph 16 with revised findings numbered as paragraphs 16(a), 16(b), 16(c) and 16(d). These findings provide a complete description of the evidence on the issue of AA's consent.

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

Dated at Madison, Wisconsin, this 24th day of July, 2007.

WISCONSIN BOARD OF NURSING

Marilyn Kaufmann, R.N., Ph.D.

Chair