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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY : : :
PROCEEDINGS AGAINST : : : FINAL DECISION
 : : : AND ORDER
JANET OLE IBITOYE, R.N., : : :
RESPONDENT. : : : LS0608041NUR
 : : :

Division of Enforcement Case No. 04NUR027

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 1ST day of March, 2007.

Marilyn Kaufmann
Member of the Board
Board of Nursing

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS

JANET OLE IBITOYE, R.N.,
RESPONDENT.

PROPOSED FINAL DECISION
AND ORDER

Case No. LS 0608041 NUR

Division of Enforcement Case # 04 NUR 027

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

Janet Ole Ibitoye
3360A N. Booth
Milwaukee, WI 53212

Janet Ole Ibitoye
2149 North 14th Street
Milwaukee, WI 53205

Jeanette Lytle
Division of Enforcement
Department of Regulation & Licensing
P. O. Box 8935
Madison, WI 53708-8935

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

The evidentiary hearing in this matter was held on January 23, 2007, at the offices of the Department of Regulation and Licensing. Appearing was Jeanette Lytle on behalf of the Division of Enforcement. The Respondent did not appear but did 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. Janet Ole Ibitoye, R.N., (DOB 02/26/1939) is duly licensed as a registered nurse in the State of Wisconsin (license #30-129347). This license was first granted on May 5, 1998.

2. Respondent's most recent address on file with the Wisconsin Board of Nursing is 3360A N. Booth, Milwaukee, WI 53212.

3. At all times relevant to this action, Respondent worked as a registered nurse at a nursing home in Milwaukee, Wisconsin.

4. On or about January 30, 2004, Respondent was providing care to a patient who had dementia. When the patient resisted care, Respondent slapped the resident's hand several times. The patient's hand was reddened from the blows.

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 Finding of Fact number Four constitutes misconduct or unprofessional conduct by the Respondent within the meaning of Wis. Adm. Code §§ N 7.04(4) and the Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Respondent's license for practice as a registered nurse in Wisconsin, number 30-129347, is REVOKED.

IT IS FURTHER ORDERED that costs of this proceeding shall be assessed against the Respondent.

APPLICABLE LAW

Wis. Admn. Code § N 7.04 (4)

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:

(4) Abusing a patient by any single or repeated act of force, violence, harassment, deprivation, neglect, or mental pressure which reasonably could cause physical pain or injury, or mental anguish or fear;

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 file an answer to the above-captioned complaint, but she did not appear at the scheduled evidentiary 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 demonstrated extreme disregard for the personal rights of her patient in this case. The respondent caused a patient to needlessly suffer, arising out of the respondent's frustration. To protect the public, caregivers such as the respondent must undertake their professional duties with the utmost regard for their patients.

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, 2007

William Anderson Black
Administrative Law Judge

