

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
: FINAL DECISION AND ORDER
BRIAN K. HOFFART, R.N., : LS0708303NUR
RESPONDENT. :

[Division of Enforcement Case #'s 06 NUR 039 & 06 NUR 315]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Brian K. Hoffart, R.N.
2183A Pine Ridge Court
Grafton, WI 53024

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

Wisconsin Board of Nursing
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board of Nursing. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Brian K. Hoffart, R.N., Respondent, date of birth April 5, 1964, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 119445, which was first granted April 8, 1995.
2. Respondent's last address reported to the Department of Regulation and Licensing is 2183A Pine Ridge Court, Grafton, WI 53024.
3. During the events of this matter, Respondent was employed as a registered nurse in the ER/Trauma Department at Froedtert Memorial Lutheran Hospital (Froedtert) in Milwaukee, Wisconsin.

COUNT I

4. On November 2, 2004, Ms. A (DOB 6/28/83) came to the Froedtert emergency room (ER) for treatment of abdominal pain. Respondent took Ms. A's medical history and vital signs and, after having Ms. A change into a hospital gown, instructed her to lie on the examining table.

5. Respondent did not wear gloves and there was no other person present during his "examination" of Ms. A. Respondent engaged in the following actions with Ms. A, for which there was no medical necessity or purpose:

- a. While Ms. A was lying on her back, Respondent lifted up her gown and began feeling her breasts.

b. Respondent asked Ms. A whether she had experienced any vaginal discharge and proceeded to explore her vagina, using his fingers to pull apart her labia.

c. Respondent then asked Ms. A to roll onto her side and while standing behind her, began to spread her “butt cheeks” apart.

d. Respondent then asked Ms. A to stand, facing away from him. While Ms. A was standing, Respondent again spread her “butt cheeks” apart and briefly caressed her buttocks.

6. Respondent left the exam room. When the physician came into the room, Ms. A told the physician that she was uncomfortable with Respondent’s actions. As a result of a complaint Ms. A made to the hospital, Respondent was counseled about caring for vulnerable females with symptoms which could put him in a compromising position when seeing the patient alone. Respondent was instructed to leave the door open, not close the curtain and to have another staff person present.

COUNT II

7. On December 15, 2005, Ms. B (DOB 1/11/85) came to the Froedtert ER complaining of abdominal pain, sore breasts and vaginal and rectal bleeding. Respondent asked to be assigned to do Ms. B’s care.

8. While performing the initial assessment, Respondent asked her occupation and Ms. B replied that she was an “exotic dancer.” Respondent asked where she was employed and after being informed, told her that he and his friends had frequented that establishment in the past. Respondent told Ms. B to remove her top and bra and put on a hospital gown and he left the room.

9. When Respondent reentered the room, he told Ms. B that the physician had instructed him to do a “breast check.” However, the physician had made no such request and it was inappropriate for Respondent to perform a breast exam in the emergency department. Respondent had Ms. B lower the front of her gown and he squeezed and caressed each of her breasts, including the nipples.

10. When the physician talked to Ms. B and learned her symptoms, he told her he would need to examine her in another room. The physician left and Respondent returned and moved Ms. B to the other exam room. Once in the new room, Respondent had Ms. B remove her pants and underwear. While alone with Ms. B in the room, Respondent had her lie on her side on the examining table. Respondent engaged in the following inappropriate actions with Ms. B which had not been ordered:

a. Respondent had Ms. B raise her top leg and bend it at the knee. While her legs were spread, Respondent gazed at her genitals before asking her to move to another position.

b. Respondent then put on a rubber glove and dabbed a lubricant on his finger. He told Ms. B that he needed to perform a rectal exam and inserted his finger into her anus. After probing inside of her anal orifice for approximately 30 seconds, Respondent told Ms. B that he believed that “everything felt fine.”

11. When the doctor returned and told Ms. B that he was going to perform a pelvic exam, she expressed concern of having to have another rectal exam. When the doctor asked her when she had her last one, he was surprised when she told him that Respondent had just done one a few moments earlier. A rectal exam was not warranted under the circumstances. Even had one been warranted, it was beyond the scope of care of a nurse in the emergency department.

12. On December 20, 2005, hospital administrators met with Respondent who denied performing a breast and rectal exam on Ms. B. On December 28, following an investigation, Respondent was terminated from his employment.

COUNT III

13. As a result of his conduct with Ms. A and Ms. B, Respondent was charged in Milwaukee County Wisconsin Circuit Court case number 06CF000247 with sexual assault. On May 7, 2007, Respondent entered a no contest Alford plea and was found guilty and convicted of:

a. One count of 3rd Degree Sexual Assault, a violation of Wis. Stat. § 940.225(3), a Class G felony, and

b. One count of 4th Degree Sexual Assault, a violation of Wis. Stat § 940.225(3m), a Class A

misdemeanor.

14. On June 22, 2007, Respondent was sentenced. On the felony, he received 18 months of initial prison confinement followed by 36 months of extended supervision. On the misdemeanor, he received 9 months in the House of Corrections, consecutive to the felony count.

15. Wis. Stats. §§ 940.225(3) and 940.225(3m) are laws substantially related to the practice of professional nursing.

ALL COUNTS

16. In determining the appropriate discipline for the above conduct, the Board has considered that on February 16, 1983, Respondent was convicted of 3rd Degree Sexual Assault, in violation of Wis. Stat. § 940.225(3) (1982). The conviction was based on Respondent having sexual intercourse with a 14-year-old girl on August 27, 1982, when he was 18 years of age.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by engaging in inappropriate sexual contact with a patient, has committed misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(11) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d). [Counts I and II]

3. Respondent, by having violated, and been convicted of, laws substantially related to the practice of professional nursing, has committed misconduct and unprofessional conduct, as defined by Wis. Adm. Code § N 7.04(1) and is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d). [Count III]

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The license of Brian K. Hoffart, R.N., Respondent, as a registered nurse in the state of Wisconsin is hereby REVOKED.

2. Respondent shall, within 90 days of the date of this Order, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$940.00 pursuant to Wis. Stat. § 440.22(2).

3. Payment shall be mailed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax (608) 266-2264
Telephone (608) 267-3817

4. This Order is effective on the date it is signed.

By: Marilyn Kaufmann
A Member of the Board

8/30/07
Date

STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
BRIAN K. HOFFART, R.N., : STIPULATION
RESPONDENT. : LS _____ NUR

[Division of Enforcement Case #'s 06 NUR 039 & 06 NUR 315]

It is hereby stipulated and agreed, by and between Brian K. Hoffart, R.N., Respondent; and John R. Zwieg, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement:

1. This Stipulation is entered into as a result of pending investigations of Respondent's licensure by the Division of Enforcement (files 06 NUR 039 & 06 NUR 315). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation, he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.

4. Respondent neither admits nor denies the allegations in this matter but agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of the Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. Attached to this Stipulation are Respondent's current wall and wallet registration certificates. If the Board does accept this Stipulation, Respondent's certificates shall be returned to Respondent with a notice of the Board's decision not to accept the Stipulation.

7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or his attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

8. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

9. Respondent is further informed that should the Board adopt this Stipulation, the Board's Final Decision and Order would constitute an agency finding within the meaning of Wis. Stats. §§ 48.685 and 50.065. Should Respondent wish to work in a Wisconsin DHFS-licensed facility, she will need to pass a Rehabilitation Review through DHFS prior to commencement of such employment.

10. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the

attached Final Decision and Order.

Brian K. Hoffart, R.N.
Respondent
2183A Pine Ridge Court
Grafton, WI 53024

Date

John R. Zwiig
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date