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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
LINDA J. CZAPLEWSKI, R.N.,	:	LS0801224NUR
RESPONDENT.	:	

Division of Enforcement Case No. 05 NUR 174

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 2nd day of October, 2008.

Marilyn Kaufmann
Member of the Board
Board of Nursing

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

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

**PROPOSED DECISION
Case No. LS0801224-NUR**

**LINDA J. CZAPLEWSKI, R.N.,
RESPONDENT.**

Division of Enforcement Case #05 NUR 174

PARTIES

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

Linda J. Czapslewski, R.N.
8606 West Lapham Street
West Allis, WI 53214

Linda J. Czapslewski, R.N.
2330 South 91st Street, Apt. 1
Milwaukee, WI 53227-2449

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. Atty. Arthur Thexton appeared on behalf of the Division of Enforcement. The respondent, Linda J. Czapslewski, did not file an Answer to the Complaint and did not appear at the hearing held in this matter.

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. Linda J. Czapslewski, (dob: 5/11/63) is and was at all times relevant to the facts set forth herein a Registered Nurse licensed in the State of Wisconsin pursuant to license #93013, which was granted on March 26, 1986. Her address of record is 8606 West Lapham Street, West Allis, WI 53214.

2. At least in May of 2005, Ms. Czapslewski was employed as a professional nurse at Children's Hospital of Wisconsin (Hospital) in Milwaukee.

3. On May 5, 2005, an employee at the Hospital detected the odor of alcohol on Ms. Czapslewski's breath while Ms. Czapslewski was on duty as a professional nurse at the Hospital.

4. On May 30, 2005, while working "on call" as a professional nurse at the Hospital, Ms. Czapslewski consumed "2 beers at lunch".

5. On May 31, 2005, two employees at the Hospital, including Ms. Czapslewski's supervisor, detected an odor of

alcohol on Ms. Czaplewski's breath. The supervisor asked Ms. Czaplewski to undergo a substance abuse evaluation, which Ms. Czaplewski agreed to do that same day. The Intoximeter test results of 0.023, which was recorded on the Alcohol Testing Form on May 31, 2005, registered at 1400 hours; 17 minutes later at 1457 hours, a 0.017 was recorded.

6. In June 2005, Dr. Michael Borkowski, an Occupational Medicine Consultant at the Hospital, did a review of the Alcohol Testing Form and other assessment data in order to provide a Fitness for Duty opinion regarding Ms. Czaplewski. In his report, which is dated June 6, 2005, Dr. Borkowski stated that Ms. Czaplewski was not fit for any work. He opined that, at the time Ms. Czaplewski began her shift at the Hospital on May 31, 2005, her blood alcohol content was in excess of legal intoxication at 0.14%; that her blood alcohol content exceeded levels established for safe driving by almost two times, and that she worked as a nurse that day in an intoxicated state.

7. Ms. Czaplewski has a past medical history of depression and/or bipolar disease for which she takes numerous medications, including Seroquel, Lamictal, Effexor, Klonopin and Propranolol.

8. Ms. Czaplewski did not file an Answer to the Compliant and did not appear at 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's conduct, as described in Findings of Fact 2-7 herein, constitutes a violation of Wis. Stat. § 441.07 (1) (b), (c) and (d), and Wis. Adm. Code § N 7.04 (1), (2) and (15).

3. By failing to file an Answer to the Compliant and failing to appear at the hearing held in this matter, Ms. Czaplewski is in default under Wis. Admin. Code § RL 2.14.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Linda J. Czaplewski to practice as a Registered Nurse (#93013) be, and hereby is, **SUSPENDED FOR AN INDEFINITE PERIOD OF TIME**.

A.1. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active nursing for every year the suspension is stayed, the Board may grant a petition by the Respondent under paragraph D. 4. for return of full licensure.

A.2. The Board may, on its own motion or at the request of the Department Monitor, grant full licensure at any time.

STAY OF SUSPENSION

B1. The suspension shall be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Respondent is in compliance with the provisions of Sections C and D of this Order.

B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. Repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Board may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B. 4.

B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:

- (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or
- (b) Actual notice to Respondent or Respondent's attorney.

- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with this Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, in a drug and alcohol treatment program at a treatment facility (Treater) acceptable to the Board or its designee; the program shall also be capable of coordinating AODA treatment with other mental health treatment including treatment for bipolar disorder. Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater and by the clinician (s) treating her bipolar disorder.
- C.2. Respondent shall immediately provide Treater and all clinicians treating her for her bipolar disorder or any other mental health condition, with a copy of this Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation, drug monitoring and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D. 1., below). If Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater, but not less than twice per month for the first year. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as required by D. 4., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program, as well as, any treatment relating to her bipolar disorder. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported monthly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except

when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee.

- C.10. Respondent shall abstain from all use of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation.
- C.11. Respondent shall report all medications and drugs, over-the-counter or prescription, taken by Respondent to Treater and the Department Monitor within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. If Respondent has not provided a release as required by C. 9 above, within 24 hours of a request by Treater or the Board or its designee, Respondent shall provide releases in compliance with state and federal laws. The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Respondent's treatment with, and provide copies of treatment records to, the requester.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Adm. Code § RL 7.11 ("Approved Program"). A list of Approved Programs is available from the Department Monitor.
- C.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b.) Production of a urine specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.14. The Approved Program shall require the testing of urine specimens at a frequency of not less than 56 times per year, for the first year of this Order. After the first year, the frequency may be reduced only upon a determination by the Board or its designee after receiving a petition for modification as required by D. 4., below.
- C.15. The Department Monitor, Board or Board designee shall determine the tests to be performed upon the specimens. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Treater or the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional urine specimens, (b) submit blood, hair or breath specimens, (c) furnish any specimen in a directly witnessed manner.
- C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.
- C.18. The Approved Program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11.

Practice Limitations

- C.19. Respondent may work as a nurse or other health care provider in a setting in which Respondent has access to controlled substances. If Treater subsequently recommends restrictions on such access, the Board or its designee may impose such restrictions.
- C.20. Respondent shall practice only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee and only in a work setting pre-approved by the Board or its designee. Respondent may not work in a home health care, hospice, pool nursing, or agency setting.
- C.21. Respondent shall provide a copy of this Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a nurse or care giver or provides health care, currently or in the future.
- C.22. It is Respondent's responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active nursing practice worked during that quarter.
- C.23. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Wisconsin 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
department.monitor@drl.state.wi.us

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order.

Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent. Additionally, every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by Board

- D.3. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.4. Respondent may petition the Board for modification of the terms of this Order or termination, however no such petition for modification shall occur earlier than one year from the date of this Order and no such petition for termination shall occur other than in compliance with paragraph A. 3. Any such petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

Costs of Compliance

- D.5. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Additional Discipline

- D.7. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 441.07.

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. Atty. Arthur Thexton appeared in this matter on behalf of the Division of Enforcement. The respondent, Linda J. Czaplewski, did not file an Answer to the Complaint and did not appear at the hearing held in this matter.

II. Applicable Laws

A. Board of Nursing

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:

(b) One or more violations of this subchapter, or any rule adopted by the board under the authority of this subchapter.

(c) Acts which show the registered nurse, nurse-midwife or licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.

(d) Misconduct or unprofessional conduct.

N 7.03 Negligence, abuse of alcohol or other drugs or mental incompetency.

(2) "Abuse of alcohol or other drugs" is the use of alcohol or any drug to an extent that such use impairs the ability of the licensee to safely or reliably practice.

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;

(2) Administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law;

(15) Violating any rule of the board.

RL 2.14 Default. If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

III Summary of Evidence

The Division of Enforcement alleges in its Complaint that Ms. Czaplewski, by engaging in the conduct described therein, violated numerous laws relating to the practice of professional nursing. The evidence presented establishes by a preponderance of the evidence that the violations occurred.

At least in May of 2005, Ms. Czaplewski was employed as a professional nurse at Children's Hospital of Wisconsin (Hospital) in Milwaukee.

On May 5, 2005, Mary Laabs, who was the Diagnostic Nurse Manager at the Hospital and Ms. Czaplewski's supervisor at that time, received a report from an employee at the hospital that Ms. Czaplewski "seems to smell of alcohol

when at work".

On May 30, 2005, while working "on call" as a professional nurse at the Hospital, Ms. Czaplewski consumed alcoholic beverages. According to Ms. Czaplewski, she "had 2 beers at lunch". [Note that there is no evidence in the record regarding whether Ms. Czaplewski provided any patient care while "on call" that day.]

On May 31, 2005, at approximately 2:15 p.m., Ms. Laabs, received a report from another employee at the hospital indicating that Ms. Czaplewski "smelled heavily of alcohol". At approximately 2:20 p.m., Ms. Laabs called Ms. Czaplewski to her office. During her discussions with Ms. Czaplewski, Ms. Laabs "detected an odor of alcohol and strong mouthwash". Ms. Laabs, informed Ms. Czaplewski that she smelled alcohol on her breath. Ms. Czaplewski denied drinking and asked Ms. Laabs if it wasn't the mouthwash that she smelled. Ms. Laabs told Ms. Czaplewski that other people had also reported the odor of alcohol on her breath. Ms. Laabs told Ms. Czaplewski that she needed to be evaluated in occupational health. Ms. Czaplewski agreed to an evaluation. As they were walking over to occupational health for the evaluation, Ms. Czaplewski told Ms. Laabs that she "had 2 beers at lunch yesterday" and that her "metabolism must be slow". Exhibit 1, page 2; Exhibits 2 and 3; Exhibit 4, p. 3.

In June 2005, Dr. Michael Borkowski, an Occupational Medicine Consultant at the Hospital, did a review of the Alcohol Testing Form and other assessment data in order to provide a Fitness for Duty opinion regarding Ms. Czaplewski. In his report, which is dated June 6, 2005, Dr. Borkowski noted the following [Exhibit 1]:

On June 6, 2005, I was asked to review a non-DOT alcohol testing form and other assessment data in order to provide a Fitness for Duty opinion regarding Linda Czaplewski. She is part of the central access team. She underwent a suspected substance abuse evaluation on May 31, 2005. On this particular workday, reportedly alcohol was detected on her breath. Intoximeter results of 0.023 registered at 1440 hours on May 31, 2005; 17 minutes later at 1457 hours, a 0.017 was recorded. Assuming that this individual did not consume alcohol on the date of evaluation, it is predicted that her blood alcohol content at approximately 0700 hours on May 31, 2005, was in excess of legal intoxication at 0.14.

Of concern for this particular individual is a past medical history of depression and/or bipolar disease. She is on numerous medications to include Seroquel, Lamictal, Effexor, Klonopin and Propranolol. On the intake form, it was indicated that she reportedly consumed two or three beers with a friend on May 30, 2005, with her last drink consumed at 2:00 p.m.

ASSESSMENT:

Ms. Czaplewski is not fit for any work. She requires re-evaluation and statements to Occupational Health by the physicians prescribing her medications. An addictionology/Substance Abuse Professional evaluation is strongly advised as this individual is not providing an accurate history. She is minimizing her alcohol consumption and the effects of it on her health/functioning. Her breath alcohol levels are not physiologically consistent with her report of consuming 2 to 3 alcoholic beverages on the day prior to testing. Had that been the case, she would have registered 0.

Of concern is her registering at the end of her shift an alcohol level of 0.023 followed by 0.017. With a 0.015 detoxification rate, it is projected that she exceeded levels established for safe driving by almost two times when she came to work. She worked in an intoxicated state. This is not consistent with fitness

for work. With her history of bipolar disease and required medications, it is probable that her physicians have recommended abstinence from alcohol. I would strongly recommend a zero tolerance for alcohol consumption if she is to return to patient care duties. This can be further discussed with an addictionologist and her personal physician (s).

IV. Appropriate Discipline

Having found that Ms. Czaplewski 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 Ms. Czaplewski's license to practice as a Registered Nurse be suspended for an indefinite period of time and that the suspension be stayed; provided, Ms. Czaplewski complies with certain conditions and limitations.

The Administrative Law Judge recommends that Ms. Czaplewski 's license to practice as a Registered Nurse be suspended for an indefinite period of time and that the suspension be stay subject to compliance with certain conditions and limitations. This measure is designed primarily to assure protection of the public and to deter other licensees from engaging in similar misconduct. Ms. Czaplewski has shown that she is incapable of practicing nursing in a manner that safeguards the interest of the public. Any measure short of suspension of her license would not provide adequate protection to the public, and would not deter other licensees from engaging in similar misconduct.

V. Costs of the Proceeding

Wis. Stat. § 440.22 (2) provides in relevant part:

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 Administrative Law Judge’s recommendation and the Board of Nursing’s decision as to whether the full costs of the proceeding should be assessed against the credential holder, like the supreme court’s decision whether to assess the full costs of disciplinary proceedings against disciplined attorneys, *see* Supreme Court Rule 22.24 (1m), is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;

- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties;
- 4) The respondent's cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licensees, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and
- 7) Any other relevant circumstances.

Under the circumstances of this case, it is reasonable to assess the full costs of this proceeding to Ms. Czaplewski.

First, the Division established by a preponderance of the evidence that the violations alleged in its Complaint occurred.

Second, although Ms. Czaplewski has no record of prior discipline, the violations established were serious with potential to cause great harm. The recommendation for suspension of her license is reflective of the serious nature of the unprofessional conduct that has been established by the evidence.

Third, Ms. Czaplewski failed to cooperate in reference to the disciplinary process. She failed to file an Answer to the Complaint and she failed to appear at the hearing held in this matter.

Finally, 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.

VI. Recommendations

Based upon the record herein, the Administrative Law Judge recommends that the Board of Nursing adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 12th day of September 2008.

Respectfully submitted,

Ruby Jefferson-Moore
Administrative Law Judge