

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
EILEEN K. LEE, R.N.,	:	<u>LS0802182NUR</u>
RESPONDENT.	:	

[Division of Enforcement Case #'s 05 NUR 235 & 05 NUR 289]

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

Eileen K. Lee, R.N.

1851 Division Street #D3

East Troy, WI 53120

Wisconsin Board of Nursing

P.O. Box 8935

Madison, WI 53708-8935

Department of Regulation and Licensing

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

PROCEDURAL HISTORY

This disciplinary proceeding was commenced by the filing and service of a Complaint and Notice of Hearing on February 18, 2008. The Division of Enforcement petitioned the Board of Nursing for the summary suspension of Respondent's license as a registered nurse in the State of Wisconsin. The parties in this matter reached a stipulated resolution in which Respondent agreed to the summary suspension of her license. The parties also stipulated to the revocation of Respondent's license in the event that Respondent is convicted of any crime in Racine County Circuit Court case numbers 2007CF1038 and/or 2007CF1224. On February 28, 2008, the Board issued an Interim Order of Summary Suspension which summarily suspended Respondent's license pending a final decision and order in this pending disciplinary proceeding.

The Board in this matter makes the following:

FINDINGS OF FACT

1. Eileen K. Lee, R.N., Respondent, date of birth July 3, 1953, was licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 84271, which was first granted March 25, 1983.

2. Respondent's address of record with the Department of Regulation and Licensing is 1851 Division Street #D3, East Troy, WI 53120.

3. Between 2002 and June of 2005, Respondent was employed as a registered nurse at Mount Carmel Medical and Rehab ("Mt. Carmel"), in Burlington, Wisconsin. Mt. Carmel is a licensed inpatient healthcare facility. Initially Respondent provided general nursing care, and with another staff member, was assigned to do wound care for Mt. Carmel's residents.

4. After approximately two years with Mt. Carmel, Respondent was promoted to assistant director of nursing and her responsibilities shifted primarily to "wound care nurse." Respondent explained her duties as wound care nurse to include monitoring wounds, documenting wound status, treatment of wounds, changing dressings and physician consultation where appropriate.

5. Between May 13, 2005 and June 1, 2005, Respondent held the position of interim Director of Nursing, in

addition to her role as wound care nurse.

6. Patient WK was one of the patients for whom Respondent was responsible. On September 30, 2005, Respondent told a Wisconsin Department of Justice (“DOJ”) investigator she recalled initially seeing Patient WK in approximately the first week of April 2005. Respondent stated that Patient WK had two or three bedsores on his buttocks. She treated the sores, monitored Patient WK at least weekly, and documented his care. Respondent indicated that she treated Patient WK for approximately one month and over that time, his wounds stayed the same. Respondent told the DOJ investigator that, regarding bedsores, Patient WK was her “most critical” patient.

7. After the first week of May 2005, Respondent became overwhelmed and she stopped treating Patient WK. Respondent admits that she did not check Patient WK’s wounds, did not arrange for anyone else to monitor and treat Patient WK’s wounds, and she stopped documentation concerning Patient WK. Respondent did not tell anyone that she had stopped providing care for Patient WK.

8. On June 1, 2005, Patient WK was transferred to Memorial Hospital of Burlington. Patient WK had numerous advanced decubitus ulcers on his buttocks and left thigh. Additionally, Patient WK had an 8-inch Stage IV ulcer on his coccyx. The ulcer had a foul odor, with green puss and other discharges coming from it.

9. Patient WK died on June 25, 2005.

10. Dr. Douglas Kelly, the Assistant Medical Examiner for Waukesha County, determined that Patient WK died from bronchopneumonia stemming from bacteria that entered his body through decubitus ulcers. Dr. Kelly found the manner of death to be neglect by caregivers. Dr. Kelly told investigators that sepsis was present throughout Patient WK’s body, and its presence was also due to the bacteria that entered Patient WK’s body through the decubitus ulcers.

11. Patient LG was another patient for whom Respondent was responsible as the wound care nurse. Patient LG’s medical records indicate that on February 21, 2005, April 1, 2005 and April 5, 2005, Patient LG had a serious stage II open pressure wound. Between April 6, 2005 and May 3, 2005, Respondent documented no care of Patient LG’s wound.

12. On April 15, 2006, in a written statement, Respondent told a Division of Enforcement consumer protection investigator, “I thought I was documented [*sic*] everything that I should have been and didn’t falsify anything.”

13. On August 21, 2007, the state charged Respondent, in Racine County Circuit Court Case No. 2007CF1038, with three charges, and ultimately as follows: neglect of a patient likely to cause great bodily harm, in violation of Wis. Stat. § 940.295(1)(k) (2 counts); intentional falsification of patient health care records, in violation of § 146.83(4).

14. On August 28, 2007, the circuit court imposed bail conditions, including that Respondent was to have no unsupervised care of patients/residents at Geneva Lake Manor (her then-employer); and Respondent was to notify her current employer of pending charges. On the same date, Respondents signed a bail/bond form, acknowledging the conditions.

15. Between August 29, 2007 and September 14, 2007, Respondent provided unsupervised care to residents at Geneva Lake Manor. Respondent states she misunderstood the bail conditions.

16. On December 5, 2007, in Racine County Circuit Court Case No. 2007CF1224, based on the conduct described in paragraphs 14-15, above, the state charged Respondent with two counts of felony bail jumping, in violation of Wis. Stat. § 946.49(1)(b).

17. On February 11, 2008, Attorney Sandra L. Nowack spoke with Marie Garwood, who is a registered nurse, employed as a surveyor with the Department of Health and Family Services. Ms. Garwood routinely surveys Wisconsin healthcare facilities for their compliance with healthcare standards and is familiar with accepted standards of care for nurses and for nurses providing wound care. Ms. Garwood is familiar with the details of Respondent’s care of Patient WK.

18. Ms. Garwood opined that Respondent had engaged in conduct such that the public health, safety and welfare imperatively required emergency suspension of Respondent’s license to practice nursing. Ms. Garwood based her opinion on

her investigation into Respondent's care of Patient WK, in addition to Respondent's failure to comply with a circuit court order requiring Respondent not to provide unsupervised care of residents.

19. On February 28, 2008, the Board issued an Interim Order of Summary Suspension which summarily suspended Respondent's license. Pursuant to a stipulated agreement, Respondent agreed that in the event she is convicted of any crime in Racine County Circuit Court case numbers 2007CF1038 or 2007CF1224, her license to practice as a registered nurse shall be revoked, and she shall pay costs associated with Division of Enforcement case numbers 05 NUR 235 and 05 NUR 289.

20. On May 9, 2008, Respondent entered an *Alford* no contest plea and was convicted of one felony count of Neglect of a Patient Likely to Cause Great Bodily Harm, in violation of Wis. Stat. § 940.295(1)(k). By entering an *Alford* plea, the Respondent did not admit the charged offense, but concedes that the prosecution could have produced evidence sufficient to prove the allegation. All other charges were dismissed.

21. Wis. Stat. § 940.295(1)(k) is a law substantially related to practice under Respondent's license.

CONCLUSIONS OF LAW

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

2. Respondent, by engaging in the conduct set out above, has violated, and been convicted of, a law substantially related to the practice of professional nursing, and has committed misconduct and unprofessional conduct as defined by Wis. Adm. Code § N 7.04(1), which subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The license of Eileen K. Lee, R.N. as a registered nurse in the State of Wisconsin is hereby **REVOKED**.
2. Pursuant to Wis. Stat. § 441.07(2), Respondent may petition the Board for the reinstatement of her license no earlier than one year following the date of this Order.
3. As a prerequisite to reinstatement, the Board will require at a minimum that Respondent will have met the following requirements.
 - a. Respondent shall have, at Respondent's own expense, undergone a mental health assessment by a mental health care professional.
 - i. The assessor must not have treated Respondent at any time and shall have been approved by the Board, with an opportunity for the Division to make its recommendation, before the evaluation is performed.
 - ii. Respondent shall provide the assessor, and any subsequent treatment providers, if any, with a copy of this Final Decision and Order and all other subsequent orders.
 - iii. Respondent shall authorize the assessor to provide the Board, or its designee, and the Division with the assessment report and all materials used in performing the assessment and shall provide the Board, or its designee, and the Division with the opportunity to discuss the assessment and findings with the assessor.
 - iv. The assessor shall have provided an opinion to a reasonable degree of professional certainty that Respondent is able to practice with reasonable skill and safety of patients and public and does not suffer from any condition which prevents her from practicing in that manner.
 - b. If the assessor has rendered the opinion required by subparagraph a.iv., and the Board agrees, the Board may reinstate Respondent's license. The Board may limit Respondent's license in a manner to address any concerns the Board has as a result of the conduct set out in the findings of fact and to address any recommendations resulting from the assessment, including, but not limited to:

i. Psychotherapy or other treatment, at Respondent's expense, by a practitioner with expertise in boundary issues, and pre-approved by the Board, to address specific treatment goals, with periodic reports to the Board by the therapist.

ii. Additional professional education in any identified areas of deficiency including, but not limited to assertiveness training, time management and professional ethics.

iii. Restrictions on the nature of practice or practice setting or requirements for supervision of practice, by a professional approved by the Board, with periodic reports to the Board by the supervisor.

iv. Requiring Respondent to appear before the Board on a periodic basis, if requested by the Board, to review the progress of any treatment and rehabilitation.

4. If following reinstatement, limitations are placed on Respondent's license, Respondent may petition the Board to modify or end the limitations.

5. If Respondent believes that the Board's refusal to reinstate her license is inappropriate or that any limitation imposed or maintained by the Board under paragraphs 2b or 3 is inappropriate, Respondent may seek a class 1 hearing pursuant to Wis. Stat. § 227.01(3)(a) in which the burden shall be on Respondent to show that the Board's decision is arbitrary or capricious or inconsistent with this Order. The revocation of license or limitations on Respondent's license shall remain in effect until there is a final decision in Respondent's favor on the issue.

6. Respondent shall not apply for reinstatement unless and until she has paid full costs to the Department of Regulation and Licensing costs of this proceeding in the amount of \$3,135.00 pursuant to Wis. Stat. § 440.22(2).

7. Payment shall be mailed or delivered to:

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

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

Wisconsin Board of Nursing

By: Marilyn Kaufmann
A Member of the Board

9/4/08
Date

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
EILEEN K. LEE, R.N.,	:	<u>LS 0802182 NUR</u>
RESPONDENT.	:	

[Division of Enforcement Case #'s 05 NUR 235 & 05 NUR 289]

It is hereby stipulated and agreed, by and between Eileen K. Lee, R.N., Respondent; Susan K. Allen of Cook & Franke, S.C., attorneys for Respondent; and Sandra L. Nowack, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending disciplinary proceeding against Respondent's licensure by the Division of Enforcement (DOE files 05 NUR 235 and 05 NUR 289). Respondent consents to the resolution of this matter by stipulation and without a hearing.
2. Respondent understands that by signing this Stipulation, she voluntarily and knowingly waives her rights, including the right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; 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 her 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 obtained advice of legal counsel prior to signing this Stipulation.
4. Respondent 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. Respondent neither admits nor denies the allegations but acknowledges that the Division could meet its burden of proof.
5. **If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this 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. 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 Respondent or her 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.
7. 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.
8. 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.

9. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

Eileen K. Lee, R.N.
Respondent
1851 Division Street #D3
East Troy, WI 53120

Date

Susan K. Allen
Cook & Franke S.C.
Attorneys for Respondent
660 E. Mason Street
Milwaukee, WI 53202-3829

Date

Sandra L. Nowack
Attorney for Complainant
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date