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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
KAREN J. GOEBEL, R.N.,	:	LS0803171NUR
RESPONDENT.	:	

Division of Enforcement Case No. 08 NUR 003

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 4th day of December, 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. LS0803171-NUR**

**KAREN J. GOEBEL, R.N.,
RESPONDENT.**

Division of Enforcement Case #08 NUR 003

PARTIES

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

Karen J. Goebel
470 East 8th Street
Fond du Lac, WI 54935

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. Sandra Nowack appeared on behalf of the Division of Enforcement. The Respondent, Karen J. Goebel, did not appear at the hearing.

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. Karen J. Goebel, R.N., (DOB 03/26/1953) is duly licensed as a registered nurse in the State of Wisconsin (license # 30-109279). This license was first granted on March 20, 1992.
2. Ms. Goebel's most recent address on file with the Wisconsin Board of Nursing is 470 East 8th Street, Fond du Lac, Wisconsin 54935.
3. In January of 2005, Mary Jane Leu, a Licensed Clinical Social Worker at the Fond du Lac County Department of Community Programs, performed an Initial Psychosocial Assessment of Ms. Goebel. Ms. Leu's initial impression was Axis I: Depressive disorder, NOS; Rule out depression with psychotic features.
4. A progress note, dated March 3, 2006, made by Dr. Yogesh C. Pareek, a Psychiatrist, listed the following diagnosis for Ms. Goebel: Axis I: Depressive disorder, NOS; Delusional disorder. Axis II: None.
5. On May 16, 2006, a Criminal Complaint was filed against Ms. Goebel in Fond du Lac County, in which she was

charged with Disorderly Conduct and Harassment. In the Criminal Complaint, it was alleged that Ms. Goebel engaged in the following conduct:

Count I Disorderly Conduct

Between May 09-12, 2006, Fond du Lac County, Wisconsin, while in a public or private place, did engage in violent, abusive, indecent, profane, boisterous or otherwise disorderly conduct, under circumstances in which such conduct tended to cause or provoke a disturbance, contrary to sec. 947.01 Wis. Stats., a Class B Misdemeanor, and upon conviction may be fined not more than One Thousand Dollars (\$1,000), or imprisoned not more than ninety (90) days, or both.

Count II Telephone Harassment

Between May 09-12, 2006, Fond du Lac County, Wisconsin, did make a telephone call without disclosing her identity and, whether or not conversation ensued, with intent to abuse any person at the number called, contrary to sec. 947.012(1) (c) Wis. Stats., a Class B Misdemeanor, and upon conviction may be fined not more than One Thousand Dollars (\$1,000), or imprisoned not more than ninety (90) days, or both.

6. At some point in time, Ms. Goebel entered a plea of not guilty by reason of mental disease or defect to the charges of Disorderly Conduct and Telephone Harassment filed in Fond du Lac County.

7. In July and August of 2006 and March and June of 2007, Fond du Lac County Circuit Court Judge Robert Wirtz ordered Ms. Goebel to undergo examinations of her competency to proceed in the criminal matter. The examinations to determine her competency to proceed in the criminal matter were performed by at least two different mental health care providers. As a result of the examinations, Ms. Goebel was diagnosed with the following: "Psychotic Disorder, Not Otherwise Specified"; "Delusional Disorder" and "Paranoid Delusional Disorder".

8. On April 3, 2008, the Wisconsin Board of Nursing summarily suspended Ms. Goebel's license to practice as a Registered Nurse. In its Order of Summary Suspension, the Board found that Ms. Goebel is mentally incompetent to practice nursing. The Board concluded that there is probably cause to believe that Ms. Goebel has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of her license to practice as a registered nurse.

9. Ms. Goebel's ability to safely and reliably practice as a registered nurse is impaired.

10. Ms. Goebel 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. Admin. Code ch. N 7.

2. The impairment of Ms. Goebel's ability to practice safely and reliably, as described in Findings of Fact 3-9 herein, makes her unfit or incompetent by reason of mental incompetency, under Wis. Admin. Code § N 7.03 (3), and Wis. Stat. § 441.07 (1) (c).

3. By failing to appear at the hearing held in this matter, Ms. Goebel is in default under Wis. Admin. Code § RL 2.14.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Karen J. Goebel to practice as a Registered Nurse (#30-109279) be, and hereby is, **SUSPENDED** for an indefinite period of time.

IT IS FURTHER ORDERED that:

(1) Petition for Stay. Ms. Goebel may petition the Board at any time for a stay of the suspension of her license. In conjunction with such petition, Ms. Goebel shall submit documentation of an evaluation of her mental health status performed by a health care provider acceptable to the Board. The assessor shall submit a written report of his or her findings directly to the Board, including: 1) a diagnosis of Ms. Goebel's condition; 2) recommendations (if any) for treatment; 3) an evaluation of Ms. Goebel's level of cooperation in the assessment process; 4) work restriction recommendations, and 5) the prognosis. The report shall include a certification stating that Ms. Goebel is fit to safely and competently return to the active practice of nursing. The assessment shall occur within (30) days prior to the date of its submission and reflect the fact that the person (s) performing the assessment received a copy of this Order.

(2) Board Action. Upon its determination that Ms. Goebel can safely and competently return to the active practice of nursing, the Board may stay the suspension for a period of three (3) months, conditioned upon compliance with the conditions and limitations set forth in paragraph (3).

(a) Respondent may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed upon respondent's practice during the prior three (3) month period.

(b) Upon a showing by respondent of complete, successful and continuous compliance for a period of five (5) years with the terms of paragraph (3), below, the Board may grant a petition by respondent for return of full licensure if it determines that respondent may safely and competently engage in practice as a registered nurse.

(3) Conditions of Stay

(a) If the assessment report referred to in paragraph (1) above recommends continued treatment for her mental illness, respondent shall maintain successful participation in a treatment program at a health care facility acceptable to the Board. As part of treatment, respondent must attend therapy on a schedule as recommended by her therapist; the Board may, however, in its discretion establish a minimum number of therapy sessions per month. Respondent shall also take any medication prescribed for the management of her mental illness.

(b) If continued therapy is required under the stay Order, respondent shall arrange for submission of quarterly reports to the Board from her therapist evaluating her attendance and progress in therapy. If the assessor recommends work restrictions, respondent shall comply with all restrictions, as recommended.

(c) Respondent shall practice as a registered nurse only under the direct supervision of another registered nurse approved by the Board. Respondent shall provide the supervisor with a copy of this Order and any subsequent stay Orders.

(d) Respondent shall provide the Board with current releases complying with state and federal laws, authorizing release and access to the records of the health care provider (s) performing her assessment.

(e) Respondent shall be responsible for all costs associated with the assessment referred to in paragraph (1) above, and for all treatment and reporting required under the terms of the stay Order.

(f) Respondent shall provide all current and prospective nursing employers with a copy of this Final Decision and

Order and any subsequent stay Orders; arrange for submission of quarterly reports to the Board of Nursing from her nursing employer (s) reporting the terms and conditions of her employment and evaluating her work performance, and report to the Board any change in her employment status within five (5) days of such change.

(g) Respondent may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the above conditions.

(4) Department Monitor

The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including receiving and coordinating all reports and petitions, and requesting additional monitoring and surveillance. The Department Monitor may be reached as follows:

Department Monitor
Department of Regulation & Licensing, Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
FAX (608) 266-2264
TEL. (608) 267-3817

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. Sandra Nowack appeared on behalf of the Division of Enforcement. The Respondent, Karen J. Goebel, did not appear at the hearing.

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:

(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.

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

(3) "Mental incompetency" is evidenced by conduct which reflects an impaired ability of the licensee to safely or reliably perform duties. "Mental incompetency" also includes, but is not limited to, adjudication of incompetence by a court of law.

B. Procedural

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 Presented

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

A. Background

Ms. Goebel obtained a degree required for licensure as a Licensed Practical Nurse from Moraine Park Technical School in Fond du Lac in 1974. She received a Bachelor of Science degree in Nursing from the University of Wisconsin-Oshkosh in 1991.

Ms. Goebel began employment at the age of 16 in a nursing home. After graduating from nursing school in 1974, Ms. Goebel obtained employment at St. Agnes Hospital in Fond du Lac where she worked for almost 30 years. First, she worked at St. Agnes on a part-time basis as a Licensed Practical Nurse, then later full-time as a Registered Nurse. After her employment ended at St. Agnes, Ms. Goebel worked in a nursing home for approximately 9 months. Then, she worked as an agency nurse for Intellistaff through March of 2006. At some point in time, Ms. Goebel obtained employment at Fox Lake Correctional Institution. That employment was terminated on August 8, 2007.

B. Criminal Charges

On May 16, 2006, a Criminal Complaint was filed against Ms. Goebel in which she was charged with Disorderly Conduct and Harassment. At some point in time after the Criminal Complaint was filed, Ms. Goebel entered a plea of not guilty by reason of mental disease or defect to the charges filed against her. *Exhibit 2.*

On July 31, 2006, Fond du Lac County Circuit Court Judge Robert Wirtz issued an Order for Examination under Wis. Stat., §971.16 (Not Guilty by Reason of Mental Disease or Defect), in which he ordered Ms. Goebel to undergo an examination conducted by Behavioral Consultants. The Order required Behavioral Consultants to report the examiner's opinion as to both Ms. Goebel's ability to appreciate the wrongfulness of her conduct, and her ability to conform her conduct to the requirements of the law at the time of the commission of the crimes charged. The Order further stated that if sufficient information is available to reach an opinion, the report shall include the examiner's opinions as to whether Ms. Goebel needs medication or treatment and whether she is competent to refuse medication or treatment as defined in Wis. Stat., § 971.16 (3). *Exhibit 3.*

In August 2006, Dr. Debra Collins at Behavioral Consultants, Inc., filed her report of her evaluation of Ms. Goebel with Judge Wirtz. In her report, Dr. Collins opined that available evidence would sustain a diagnosis of "Psychotic Disorder, Not Otherwise Specified" applying to Ms. Goebel at the time of the alleged offenses. Dr. Collins concluded that, although Ms. Goebel has mental health issues that warrant on-going treatment and monitoring, she was unable to support Ms. Goebel's special plea (not guilty by reason of mental disease or defect). *Exhibit 12.*

On October 17, 2006, Judge Wirtz issued an Order for Competency Examination by DHFS in which he ordered Ms. Goebel to submit to an examination of her competency to proceed in the criminal matter. The Order provided that the examination would be conducted by the DHFS. *Exhibit 4.*

In December 2006, pursuant to Judge Wirtz's October 17, 2006 Order for Competency Examination by DHFS, Dr. Kenneth Smail, Director of the Wisconsin Forensic Unit, filed his report of his evaluation of Ms. Goebel with Judge Wirtz. Wisconsin Forensic Unit is a Division of Behavioral Consultants, Inc., which is a contract agency of the Department of Health and Family Services. In his report, Dr. Smail concluded that Ms. Goebel has a major mental illness diagnosed as "Delusional

Disorder"; that he did not believe she had the capacity to rationally understand the prosecution of the case involving the criminal charges filed against her and, for that reason, he believed that she was not competent to proceed. *Exhibit 13*.

In March 2007, at the request of Ms. Goebel's attorney, Circuit Court Judge Robert Wirtz issued an Order for Competency Examination by DHFS in which he ordered Ms. Goebel to submit to an examination of her competency to proceed in the criminal matter. The Order provided that the examination would be conducted by the Wisconsin Department of Health and Family Services (DHFS). *Exhibit 5*.

In April 2007, pursuant to Judge Wirtz's March 6, 2007 Order for Competency Examination by DHFS, Dr. Smail filed his report of his evaluation of Ms. Goebel with Judge Wirtz. In his report, Dr. Smail concluded that the evidence still supported an opinion that Ms. Goebel has a "Delusional disorder". Dr. Smail opined that, in spite of Ms. Goebel's delusional disorder, he believed that she possessed the substantial capacity to reasonably and rationally understand the charges filed against her; to understand the court proceedings; to consult with her attorney and to make decisions which are essentially hers to make. Dr. Smail opined that Ms. Goebel could proceed as a defendant without implicating her delusions in her response. Ex. 14.

On June 21, 2007, Judge Wirtz issued an Order for Competency Examination by DHFS in which he ordered Ms. Goebel to submit to an examination of her competency to proceed in the criminal matter. The Order provided that the examination would be conducted by DHFS. Ex. 6.

In November 2007, pursuant to Judge Wirtz's Order for Competency Examination by DHFS, Dr. Smail filed his report of his evaluation of Ms. Goebel with Judge Wirtz. In his report, Dr. Smail concluded that the evidence still supported an opinion that Ms. Goebel remained mentally ill with a diagnosis of "Paranoid Delusional Disorder". Dr. Smail opined that Ms. Goebel was not competent to proceed with the trial. *Exhibit 15*.

On December 10, 2007, Judge Wirtz issued an Order on Competency in which he ordered Ms. Goebel to appear in court every six months for redetermination of her competency to proceed; that the district attorney's office inform the Court of Ms. Goebel's legal and mental status every 6 months, and that the Court reserved jurisdiction to impose reasonable nonmonetary conditions which would protect the public and enable the Court and the district attorney to discover whether Ms. Goebel subsequently becomes competent. *Exhibit 7*.

(C) Mental Illness

Ms. Goebel's diagnosis of mental illness is based, in part, on the following behavior:

A) At least in 2006, Ms. Goebel had multiple contacts with the police. Incidents referenced in police reports include: (1) Respondent made harassing telephone calls to a physician she had worked with and looked in his home windows; (2) Respondent expressed belief that a co-worker's twin babies were her own and were fathered by the physician she was making harassing calls to; (3) Respondent believed that there were tracking devices in her car; (4) Respondent had barricaded her doors with chairs and other furniture; (5) Respondent yelled at people outside of a hospital; (6) Respondent stated that she saw lips move in a picture and it spoke to her; (7) Respondent stated that crows were following her; and (8) Respondent stated that she had the ability to read people's minds. *Complaint of Division of Enforcement, paragraph #5; Exhibit 2*.

B) In March of 2006, Dr. Yogesh Pareek, a Psychiatrist, noted in Ms. Goebel's patient file that Ms. Goebel "continues to show delusions regarding a block being put on her records". *Exhibit 17*.

C) In August 2006, Dr. Debra Collins, a Psychologist, noted the following in a report to Fond du Lac Circuit Court Judge Robert Wirtz regarding Ms. Goebel's mental health status:

At another point, her treating psychiatrist recommended an antipsychotic agent, Abilify, after informing her that she was "delusional about an academic block." Ms. Goebel said that she came to learn of a "discriminatory block" placed on her and unspecified others around the county in the mid 1990s when she was not permitted

to pursue her educational career toward a goal of becoming a Nurse Practitioner. She said that she was then informed by an individual that there was a "secret code within the educational system" and that as a consequence of this secret code, her "education would go no further." She became quite animated while discussing the "discriminatory block." She said that at one point she traveled to Washington D.C., and picketed in front of the White House in an effort to educate others that "it exists." *Exhibit 12, page 3, paragraph 2.*

D) In August of 2007, Ms. Goebel was terminated from a nursing position at Fox Lake Correctional Institution. Her personnel file documented bizarre behavior such as: (1) claiming she could forecast future events by typing them into a computer; (2) believing that someone was following her; (3) refusing to go to work because she believed she was only safe in her home; (4) claiming she was part of an FBI investigation; and (5) putting a sign on her door that read: "House Closed - Gone - FBI/Presidential/Citizen protection". *Complaint of Division of Enforcement, paragraph #4; Exhibits 18 and 19*

E) In June of 2008, Ms. Goebel applied for and obtained employment with Medical Assets as a registered nurse. Ms. Goebel did not disclose to Medical Assets that her license to practice as a registered nurse had been suspended by the Board of Nursing in April of 2008. After Medical Assets learned that Ms. Goebel's license had been suspended, Ms. Goebel was confronted about the status of her license. Ms. Goebel indicated that her license was not suspended and further stated that "she has a device on her person that warns her if there might be problems whenever she enters a building". *Exhibit 21.*

F) Various individuals described Ms. Goebel's speech as being bizarre, disorganized, and nonsensical. *Complaint of Division of Enforcement, paragraph #6.*

(D) Summary Suspension

On April 3, 2008, the Wisconsin Board of Nursing summarily suspended Ms. Goebel's license to practice as a Registered Nurse. In its Order of Summary Suspension, the Board found that Ms. Goebel is mentally incompetent to practice nursing. The Board concluded that there is probably cause to believe that Ms. Goebel has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of her license to practice as a registered nurse. *Exhibit 20.*

During the week of June 2-6, 2008, Ms. Goebel applied for and was hired as a Registered Nurse with Medical Assets of Wisconsin, a temporary staffing agency. Ms. Goebel represented to the manager at Medical Assets that her license as a Registered Nurse was in good standing. Ms. Goebel reported for work at Medical Assets from June 6-8, 2008. She worked 12 hour shifts as a Registered Nurse on each of these days. On June 9, 2008, the manager at Medical Assets learned that Ms. Goebel's license to practice nursing had been suspended in April, 2008. When the manager confronted Ms. Goebel about the status of license, Ms. Goebel indicated that her license was not suspended, and further stated that "she has a device on her person that warns her if there might be problems whenever she enters a building". *Exhibit 21.*

(E) Default

Ms. Goebel, by failing to appear at the hearing held in this matter is in default under Wis. Admin. Code § RL 2.14.

Wis. Admin. Code § RL 2.14, states, in part, that if the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed, 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.

IV Analysis of Evidence

The evidence presented in this case was provided in the form of documentary evidence. No witnesses appeared at the hearing. The evidence submitted by the Division of Enforcement establishes that Ms. Goebel is unfit or incompetent to practice

professional nursing by reason of mental incompetency. Based upon assessments performed by numerous health care providers in conjunction with pending criminal charges, Ms. Goebel suffers from Paranoid Delusional Disorder, a form of mental illness.

At the request of the Division of Enforcement, Linda Denise Oakley, R.N., PH.D., submitted an affidavit stating her conclusions regarding Ms. Goebel's mental health status. Ms. Oakley is a registered nurse licensed to practice in the state of Wisconsin. She is a professor at the University of Wisconsin-Madison, School of Nursing, with decades of professional nursing experience, and expertise in clinical nursing practice and in mental health. In addition to a Ph. D., in Nursing Science, Ms. Oakley holds a Master of Science degree in Psychiatric Mental Health Nursing. Based upon a review of the records pertaining to the court case involving the criminal charges filed against Ms. Goebel, and the mental health evaluations filed by several health care providers with the Court in that case, Ms. Oakley opined that Ms. Goebel has exhibited conduct consistent with the diagnosis of Paranoid Delusional Disorder. According to Ms. Oakley, Ms. Goebel's conduct demonstrates impairments in judgment such that she is unable to practice nursing with reasonable skill and safety to patients. Ms. Oakley stated in her affidavit that she did not personally examine Ms. Goebel. *Affidavit of Linda Denise Oakley, R.N., PH.D.; Exhibits 16 and 20.*

Although Ms. Goebel did not appear at the hearing, she did file an Answer to the Complaint. Attached to Ms. Goebel's Answer is a copy of a Report of Psychological Evaluation based upon an evaluation performed by Dr. Steven Klein in January of 2008. Dr. Klein, who is a Clinical Psychologist, has been licensed to practice Psychology independently in the state of Wisconsin since 1986. Dr. Klein concluded that Ms. Goebel is competent to stand trial and that she has no mental illness. *Report of Psychological Evaluation, Respondent's Attachment to the Answer to the Complaint, page 3, paragraph 3.*

Although Dr. Klein concluded that Ms. Goebel had no mental illness, he did note in his report that all of the information contained in his report was based solely on the information provided by Ms. Goebel. He did not obtain collateral information and he did not review Ms. Goebel's previous medical records. If Dr. Klein had reviewed Ms. Goebel's medical records, he would have learned the following:

In January of 2005, Mary Jane Leu, a Licensed Clinical Social Worker at the Fond du Lac County Department of Community Programs, performed an Initial Psychosocial Assessment of Ms. Goebel. Ms. Leu's initial impression was Axis I: Depressive disorder, NOS; Rule out depression with psychotic features.

In March of 2006, Dr. Yogesh Pareek, a Psychiatrist, diagnosed Ms. Goebel as having Depressive disorder, NOS and Delusional disorder.

Between August 2006 and November 2007, at least two different mental health care providers performed examinations of Ms. Goebel to determine her competency to proceed in the criminal matter pending against her. As a result of those examinations, Ms. Goebel was diagnosed with the following: "Psychotic Disorder, Not Otherwise Specified"; "Delusional Disorder" and "Paranoid Delusional Disorder".

Finally, in reference to treatment, Ms. Goebel has repeated, over a course of years, refused to consider antipsychotic medications. *Exhibit 12, page 2; Exhibit 20, page 8, par. i.*

V. Appropriate Discipline

Having found that Ms. Goebel 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. Stat. § 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. Goebel's license to practice as a Registered Nurse be suspended until such time she is determined to be mentally competent to practice professional nursing or, alternatively be revoked. Ms. Goebel did not provide a recommendation regarding the disposition of this matter.

The Administrative Law Judge recommends that Ms. Goebel's license to practice as a Registered Nurse be suspended for an indefinite period of time. This measure is designed primarily to assure protection of the public. Ms. Goebel is not capable 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. Ms. Goebel is free to petition the Board for a stay of the suspension of her license upon a showing that she is capable of practicing nursing in a manner that safeguards the interest of the public.

VI. 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, a portion of the costs or no 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 recommended that the Board of Nursing not assess costs against Ms. Goebel.

First, only one count was charged in this case. That count, which related to Ms. Goebel's inability to safely practice nursing as a result of her mental illness, was not based on any misconduct that involved treatment of a patient.

Second, in reference to Ms. Goebel's level of cooperation, although Ms. Goebel did not appear at the hearing, she did file an Answer to the Complaint. There is no other evidence in the record indicating that she did not cooperate with the

disciplinary process.

Third, in reference to prior discipline, there is no evidence in the record that Ms. Goebel has ever been disciplined by the Board.

Finally, in reference to other relevant circumstances, any funds that Ms. Goebel has access to should be reserved to pay for treatment of her illness.

VII. 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 7th day of November 2008.

Respectfully submitted,

Ruby Jefferson-Moore
Administrative Law Judge