

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
MARCUS E. CONNELLY, L.P.N.,	:	LS0902263NUR
RESPONDENT.	:	

Division of Enforcement Case # 08 NUR 378

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

Marcus E. Connelly, L.P.N.
736 Jefferson Street
Arcadia, WI 54612

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

Board of Nursing
Department of Regulation & 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 the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Marcus E. Connelly, L.P.N., (DOB 09/16/1958) is duly licensed as a practical nurse in the state of Wisconsin (license # 31-305382). This license was first granted on November 26, 2004.
2. Respondent's most recent address on file with the Wisconsin Board of Nursing is 736 Jefferson Street, Arcadia, Wisconsin, 54612.
3. At all times relevant to this action, Respondent was working as a practical nurse at a facility serving patients with dementia.
4. On or about October 9, 2008, a resident reported that Respondent hit her three times in the head. Respondent denied this allegation, and stated that the resident slapped him, but that he did not touch the resident. The resident has dementia and there was no further evidence of physical contact.

5. At or around the time that the resident reported that Respondent hit her, other staff heard Respondent yelling at the resident. When a co-worker asked him how things were going, he replied, "Okay, but I could kick someone's ass." He told another co-worker that this resident makes him mad and that he "could slam her against the wall."

6. Respondent was interviewed in connection with this incident. During that interview, the following concerns were noted:

- (a) When discussing re-directing the resident, Respondent described it as "herding sheep."
- (b) Respondent's nursing progress note in the resident's chart indicated "controlling temper." Respondent stated that he was referring to the fact that he was controlling his temper, because "nobody strikes me."
- (c) When asked what residents were difficult to care for, Respondent listed eight residents. He admitted that he had raised his voice with one of these residents.
- (d) Respondent's tone during the interview was perceived by the interviewers as hostile, angry and sarcastic.
- (e) The interviewers perceived a lack of understanding about a caregiver's responsibility to protect residents from abuse.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction to act in this matter, pursuant to Wis. Stat. § 441.07, and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

2. The conduct described in paragraphs 4 – 6 above constitutes a violation of Wisconsin Administrative Code § N 7.04(4) and subjects Respondent to discipline pursuant to Wis. Stat. § 441.07(1)(d).

ORDER

IT IS ORDERED:

- 1. Marcus E. Connelly, L.P.N., is REPRIMANDED.
- 2. The license of Marcus E. Connelly, L.P.N., to practice nursing in the State of Wisconsin, and his privilege to practice pursuant to the Multi-State Nursing Compact, is LIMITED as follows:
 - (a) Within ninety (90) days of the date of this Order, Respondent, at his own expense, shall undergo a psychological evaluation.
 - i. The evaluating psychologist 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, prior to the evaluation being performed.
 - ii. The Division shall provide the evaluating psychologist and Respondent with those portions of the investigative file which the Division believes may be of assistance in performing the evaluation. Respondent may provide the evaluating psychologist with any information Respondent believes will be of assistance in performing the evaluation and shall immediately provide copies of that information to the Division.
 - iii. Respondent shall authorize the evaluating psychologist to provide the Board, or its designee, and the Division with the evaluation report and all materials used in performing the evaluation and shall provide the Board, or its designee, and the Division with the opportunity to discuss the evaluation and findings with the evaluating psychologist.

iv. The Board may limit Respondent's license in any manner it sees fit to address any recommendations resulting from the assessment. In the event that the evaluating psychologist is of the opinion that Respondent cannot safely practice nursing, the board may suspend Respondent's license until such time as Respondent proves he is capable of safely practicing nursing.

- (b) Respondent shall complete the Rehabilitation Review process through the Department of Health and Family Services pursuant to Wis. Stat. §50.065 and Ch. HFS 12, Wis. Admin. Code prior to working in any facility licensed by the Department of Health and Family Services.
- (c) Respondent, at his own expense, shall complete 12 hours of pre-approved continuing education in anger management for nurses within 90 days of the date of this Order. Respondent is responsible for finding an appropriate course and submitting the course information to the Board for approval prior to taking the course and in sufficient time to obtain board approval within the 90 day time frame, taking into account the board's meeting schedule.
- (d) For a period of at least two (2) years from the date of this Order, Respondent shall arrange for quarterly reports from his nursing employer(s) reporting the terms and conditions of his employment and evaluating his work performance. These reports shall be submitted to the Department Monitor in the Department of Regulation and Licensing Division of Enforcement, at P.O. Box 8935, Madison, Wisconsin, 53708-8935.
- (e) For a period of at least two (2) years from the date of this Order, 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.
- (f) Respondent shall notify the Department Monitor of any change of nursing employment during the time in which the Order is in effect. Notification shall occur within fifteen (15) days of a change of employment and shall include an explanation of the reasons for the change.

3. Respondent shall, within ninety (90) days from the date of this Order, pay costs of this proceeding in the amount of One Hundred Dollars (\$100.00). Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

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

4. In the event Respondent violates the terms of this Order, including but not limited to failing to pay costs as ordered, failing to comply with the ordered continuing education, or failing to comply with any limitations on his license, the Respondent's license (#31-305382) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

5. This Order is effective on the date of its signing.

By: Marilyn Kaufmann
A Member of the Board

2/26/09
Date

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	STIPULATION
MARCUS E. CONNELLY, L.P.N.,	:	LS# _____
RESPONDENT.	:	

Division of Enforcement Case # 08 NUR 378

Marcus E. Connelly, L.P.N., personally on his own behalf; and Jeanette Lytle, attorney for the Department of Regulation and Licensing, Division of Enforcement, stipulate:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement (case # 08 NUR 378). Respondent consents to the resolution of this investigation by stipulation.
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 a 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 the 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 of Nursing. 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 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 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 of Nursing ever assigned as an 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 Board 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, he will need to pass a Rehabilitation Review through DHFS prior to commencement of such employment.

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

Marcus E. Connelly, L.P.N.
736 Jefferson Street
Arcadia, WI 54612

Date

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

Date