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**Before The
State Of Wisconsin
BOARD OF NURSING**

In the Matter of the Disciplinary Proceedings

Against **SARAH J. CARPENTER, L.P.N.**
Respondent

FINAL DECISION AND ORDER
Case No. DHA Case No. DRL-09-0057

LS0904231NUR

Division of Enforcement Case No. 08 NUR 130

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

Sarah J. Carpenter
P.O. Box 32
Whitewater, WI 53190

Sarah J. Carpenter (Alternate Address)
N6764 Lake Lorraine Road
Delavan, WI 53115

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

Board of Nursing
P. O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The Complaint was filed on April 24, 2009, by U.S. Mail. Further service was made upon Respondent by the Sheriff of Walworth County on May 4, 2009. Respondent was provided twenty days to file an Answer to the Complaint. The time to file an Answer was later enlarged by Order of the Administrative Law Judge (ALJ). Respondent by Answer postmarked December 2, 2009, filed admissions to each allegation set forth in the Complaint. Complainant by motion dated December 18, 2009, moved for a Judgment and Final Decision on the pleadings.

The Proposed Decision and Order was issued by the ALJ on January 14, 2010. The ALJ recommended an order in favor of the complainant on each allegation set forth in the Complaint, and assessed the full costs of the proceeding on Respondent. The ALJ did make a disciplinary recommendation. The Department appeared by Attorney Jeanette Lytle and filed Objections to

the Proposed Decision. Based upon a review and consideration of the entire record, including the recommendations of the ALJ and the Objections to the Proposed Decision, the Board now issues this Final Decision and Order with an explanation of variance.

FINDINGS OF FACT

1. Sarah J. Carpenter, L.P.N., presently known as Sarah J. Busch, Respondent herein, N6764 Lake Lorraine Road, Delevan, Wisconsin 53115, was born on January 4, 1979 and is licensed to practice as a licensed practical nurse in the state of Wisconsin, license #306467-31, the license having been granted on August 18, 2005.

2. Respondent was employed as a licensed practical nurse at U.W. Health Clinic in Madison, Wisconsin and, as a nurse employed at the facility, had access to the facility's computer system containing patient information. Respondent's maiden name was Sarah J. Busch.

3. While employed at the U.W. Health Clinic, Respondent accessed the personal data and patient information of a patient, Sarah L. Busch, without the consent or knowledge of Sarah L. Busch. At the time that Respondent accessed the personal and patient information for Sarah L. Busch, she had no legitimate need to access this information in the course of or in connection with her employment at U.W. Health Clinic.

4. The information accessed by Respondent included but was not limited to Sarah L. Busch's name, date of birth, and social security number. Respondent utilized this personal information without the knowledge or consent of Sarah L. Busch to apply for and to obtain 2 credit cards in the name of Sarah L. Busch.

5. Respondent utilized these credit cards to make purchases in the name of Sarah L. Busch on several occasions including, but not limited to, charges for jewelry purchased at a jewelry party hosted by Ann Marie Legutki on or about June 25, 2006 at Sarah J. Carpenter's parents' residence on Lake Lorraine Road, Richmond Township, Walworth County, Wisconsin.

6. Respondent, by engaging in the conduct described in paragraph 2, intentionally used personal identifying information of another individual without the individual's authorization or consent and represented that she was this individual to obtain credit cards in the name of this individual and to utilize the credit cards obtained to purchase items and thereby acted in violation of Wis. Stat. § 943.201(2)(a).

7. On March 13, 2008, Respondent was convicted, pursuant to a plea of guilty, of a violation of Wis. Stat. § 943.201(2)(a) and a Judgment of Conviction was entered by the Circuit Court for Walworth County, State of Wisconsin.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction to act in this matter pursuant to Wis. Stat. § 441.07.
2. The conduct described in paragraphs 3 through 5 above constitutes a violation of Wis. Stat. § 441.07(1)(d) and Wisconsin Admin. Code § N 7.04(1) in that Respondent was convicted of a crime substantially related to the practice of licensed practical nursing.
3. This Final Decision and Order constitutes an agency finding within the meaning of Wis. Stats. §§ 48.685, 50.065, and Wis. Admin. Code § DHS 13.05(5) in that the Board finds that Respondent has misappropriated funds of patient, and that misappropriation is defined to include identity theft pursuant to Wis. Admin. Code § DHS 13.03(12)(d).

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the license of **SARAH J. CARPENTER** (lic. #306467-31) to practice as a licensed practical nurse in the State of Wisconsin shall be **REVOKED**.

IT IS FURTHER ORDERED that the assessable costs of this proceeding shall be imposed upon **SARAH J. CARPENTER**, pursuant to Wis. Stat. § 440.22, in the amount of \$2,985.87, which shall be due and payable within ninety (90) days of the effective date of this Final Decision and Order.

IT IS FURTHER ORDERED that Respondent may not petition for reinstatement of her registered nurse license pursuant to Wis. Stat. § 441.07(2) earlier than one year from the date of revocation.

IT IS FURTHER ORDERED that this Final Decision and Order shall be referred and reported to the Department of Health Services (DHS) as a caregiver violation. Respondent will be required to satisfactorily pass a Rehabilitation Review administered by DHS prior to commencement of employment in a DHS-licensed facility.

EXPLANATION OF VARIANCE

The Board of Nursing (hereinafter "Board") reviewed the Findings of Fact, Conclusions of Law, Discussion and Order in the proposed decision submitted by the ALJ. The Board also reviewed the Objections to the proposed decision filed by Complainant. Based upon the evidence in the record of the proceedings, as well as the Othe Board has varied certain portions of the recommendations contained therein, which are further explained herein. Specifically, the Board

has supplemented the factual findings to include the allegations in the Complaint which were admitted. The ALJ's factual findings were limited to a mere recitation of the procedural history. The Board has also revised conclusions of law to set forth specific violations of the administrative code and has included a disciplinary order which was totally lacking in the ALJ's *Proposed Decision and Order*. Finally, the Board has adjusted the assessment of costs to reduce the amount in consideration of equitable factors favoring the Respondent.

This variance fulfills the requirements of Wis. Stat. § 227.46(4), which provides that in any case which is a class 2 disciplinary proceeding, the hearing examiner shall prepare a proposed decision, which includes findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case. Although the ALJ issued a proposed decision which ordered judgment for the Complainant, the ALJ did not include the necessary elements for an agency decision under the requirements of Chapter 227, Stats. The law requires that a proposed decision must be issued in a form that may be adopted by the board and must contain four components: (1) Findings of Fact; (2) Conclusions of Law; (3) Order, and (4) Opinion of the ALJ. Accordingly, the Board has made the following variances to the Proposed Decision and Order to fulfill the requirements of the law:

1. Based upon the evidence in the record, the section of the *Proposed Decision and Order* titled "Findings of Fact" is revised to describe the conduct which constitutes the underlying violation, as opposed to merely restating the procedural history. The factual findings are based upon the allegations in the Complaint which were admitted by Respondent.
2. Based upon the evidence in the record, the section of the *Proposed Decision and Order* titled "Conclusions of Law" is revised to reflect that Respondent's conduct was unprofessional and constituted a violation of § N 7.04(1), Wis. Admin. Code, which defines unprofessional conduct as including, but not limited to, "violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing."
3. The section of the *Proposed Decision and Order* titled "Order" is further revised to set forth the appropriate discipline to be imposed upon Respondent's registered nurse license. The disciplinary outcome is within the discretion of the Board based upon the following factors:
 - number of counts charged,
 - number of counts contested and proven,
 - the nature and seriousness of the misconduct,
 - the level of discipline sought by the parties,
 - the Respondent's cooperation with the disciplinary process and
 - prior discipline, if any.

The record evidence shows that Respondent agreed to enter into a stipulation in this matter as of July 1, 2009. The ALJ noted that Respondent accepted full responsibility for her conduct and cooperated with every aspect of the proceeding. Any costs incurred after the date upon which Respondent entered into the stipulation were not caused by her inaction or delay, therefore, she should not be held responsible for those additional costs. Accordingly, any costs incurred after July 1, 2009, are not imposed against Respondent and the amount of Respondent's assessable costs shall be capped at \$2,985.87.

STATE OF WISCONSIN
BOARD OF NURSING

Marilyn Kaufmann, R.N., Ph.D.
Chair of the Board

Date

The record evidence shows that Respondent agreed to enter into a stipulation in this matter as of July 1, 2009. The ALJ noted that Respondent accepted full responsibility for her conduct and cooperated with every aspect of the proceeding. Any costs incurred after the date upon which Respondent entered into the stipulation were not caused by her inaction or delay, therefore, she should not be held responsible for those additional costs. Accordingly, any costs incurred after July 1, 2009, are not imposed against Respondent and the amount of Respondent's assessable costs shall be capped at \$2,985.87.

STATE OF WISCONSIN
BOARD OF NURSING



Kathleen L. Sullivan, R.N.,
Vice Chairperson

3/25/10

Date