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Before The
State Of Wisconsin
BOARD OF NURSING

In the Matter of the Disciplinary Proceedings
Against Linda S. Stone, R.N., Respondent

FINAL DECISION AND ORDER

LS09/125/NUR

Division of Enforcement Case No. 08 NUR 343

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, make 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 at Madison, Wisconsin on 3/25/10.

A handwritten signature in cursive script, appearing to read "Katherine A. Smith", written over a horizontal line.

Member
Board of Nursing



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Disciplinary Proceedings
Against **LINDA S. STONE, R.N.**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-09-0123

Division of Enforcement Case No. 08 NUR 343

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Linda S. Stone
P.O. Box 825
Herber Springs, AZ 72543

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

These proceedings were initiated when the Department of Regulation and Licensing, Division of Enforcement (the "Division") filed a formal Complaint against the Respondent, Linda S. Stone, R.N. The Division filed said Complaint with the Division of Hearings and Appeals on November 25, 2009. On the same date, the Division sent a copy the Complaint and a Notice of Hearing via certified and regular mail to Linda S. Stone at the address it believed to be Respondent Stone's current address, P.O. Box 42, Corning, AR 7222-0042. The Division also mailed a copy of the above-referenced documents to Respondent Stone's address of record with the Department of Regulation and Licensing, 3206A North Booth, Milwaukee, WI 53212, by regular mail at this time. The Notice of Hearing stated that the Respondent was required to file a written Answer to the Complaint within 20 days, failing which "[she would] be found to be in default and a default judgment may be entered against [her] on the basis of the Complaint and other evidence and the Wisconsin Board of Nursing may take disciplinary action against [her]

and impose the costs of the investigation, prosecution and decision of this matter upon [her] without further notice or hearing.”

Both sets of the above documents were returned to the Division as “not deliverable,” and on December 14, 2009, the Division resent copies of the Complaint and Notice of Hearing via certified and regular mail to the forwarding address for Respondent Stone provided by the U.S. Postal Service; P.O. Box 825, Herber Springs, AZ 72543-0825. The documents were again returned to the Division as “not deliverable.” To date, no Answer has been filed.

On January 4, 2010, the undersigned Administrative Law Judge (ALJ) of the Division of Hearings and Appeals issued a Notice of Telephone Prehearing Conference that set a telephone conference with Respondent Stone and Attorney Jeanette Lytle of the Division of Enforcement for January 19, 2010. This Notice instructed Respondent Stone to contact the undersigned ALJ to provide the telephone number for which she could be reached for the January 19, 2010, telephone conference, and was sent to all three addresses on file for the Respondent as provided above.

In each instance, the Notice was returned as “not deliverable.” As such, Respondent Stone did not contact the undersigned ALJ with a telephone number that she could be reached at for the January 19, 2010, telephone conference, and the telephone conference that was conducted on that date was without the Respondent’s participation.

At the conference, Attorney Lytle made a motion for default pursuant to Wis. Admin. Code § RL 2.14, noting that substantial efforts had been made to locate Respondent Stone despite the fact that, as the licensee, it had been her responsibility to keep a current address on record with the Department of Regulation and Licensing. The undersigned ALJ summarily accepted Attorney Lytle’s default motion and issued a Notice of Default instructing Respondent Stone that she was in default and that findings would be made and an Order entered on the basis of the Complaint and other evidence. The Notice of Default further ordered Attorney Lytle to provide the undersigned ALJ with the Division’s written recommendations for discipline and the assessment of costs in this matter by January 25, 2010. It was mailed to Respondent Stone at the last address on record for her, P.O. Box 825, Herber Springs, AZ 72543-0825. Attorney Lytle provided the undersigned ALJ with its written recommendations as to discipline and costs on or about January 26, 2010.

The Respondent has failed to respond to either the Notice of Default issued against her, or the written recommendations provided by Attorney Lytle on January 26, 2010.

FINDINGS OF FACT

On the evidence presented, the undersigned ALJ makes the following findings of fact:

1. Linda S. Stone, R.N., Respondent, date of birth October 30, 1959, is licensed by the Wisconsin Board of Nursing as a registered nurse (R.N.) in the State of Wisconsin, pursuant to license number 103865, which was first granted March 16, 1990.
2. Respondent Stone's most recent address on file with the Wisconsin Board of Nursing is 3206A North Booth, Milwaukee, Wisconsin, 53212.
3. In or about 2007 and 2008, Respondent Stone was providing nursing services at an Oak Creek, Wisconsin company.
4. One of her patients was employee R.H.
5. Respondent Stone dated R.H. while he was her patient.
6. The relationship became abusive. Some abusive behavior occurred in the company's health office.
7. Respondent Stone was warned by her employer on July 10, 2007 that dating patients was inappropriate.
8. On May 27, 2008, Respondent Stone's employer received an allegation that Respondent Stone was under the influence of drugs.
9. Respondent Stone was evaluated by another R.N., who saw no overt evidence of drugs.
10. When confronted, Respondent Stone denied using drugs, and became very upset. She indicated that patient R.H., who she referred to as her boyfriend, was out to get her and probably made the complaint. Respondent Stone then made the statement: "I wanted to commit suicide two weeks ago and now this."
11. As set out in the Procedural History above, a Complaint and Notice of Hearing were sent to Respondent Stone at her most recent address on file with the Department of Regulation and Licensing/Wisconsin Board of Nursing (3206A North Booth, Milwaukee, Wisconsin, 53212) and the address believed to be her current address (P.O. Box 42, Corning, AR 7222-0042) on November 25, 2009.
12. On December 14, 2009, the Complaint and Notice of Hearing were then *again* sent to Respondent Stone at the forwarding addressing provided by the U.S. postal service (P.O. Box 825, Herber Springs, AZ 72543-0825).

13. On or about January 4, 2010, the undersigned ALJ sent a Notice of Telephone Prehearing Conference for January 19, 2010 to Respondent Stone at all three of the above-listed addresses.

14. Respondent Stone did not appear at this hearing, and the Division made a motion for default which was summarily accepted by the undersigned ALJ.

15. On or about January 19, 2010, the undersigned ALJ sent a Notice of Default to the Respondent at her last known address.

16. Respondent Stone has not responded to this Notice, or otherwise to the Complaint against her.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. §§ 441.07 and 441.50(3)(b).

2. Wisconsin Administrative Code § RL 2.08(1) provides in relevant part that "[t]he complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent" and that "[s]ervice by mail is complete upon mailing." Because the Complaint and Notice of Hearing, Notice of Telephone Prehearing Conference, and Notice of Default were mailed to Respondent Stone at her last known address, she was duly served with these papers pursuant to Wis. Admin. Code § RL 2.08.

3. As the licensee, it was Respondent Stone's responsibility to keep her address on record with the Department of Regulation and Licensing current.

4. The Respondent has defaulted in this proceeding pursuant Wis. Admin. Code § RL 2.14 by failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § RL 2.09.

5. Allegations in a complaint are deemed admitted when not denied in an answer. Wis. Admin. Code § RL 2.09. The Respondent has admitted to the allegations of the Complaint by default by not filing an Answer.

6. Pursuant to Wis. Stat. § 441.07(1)(d), the Board of Nursing has authority to "revoke, limit, suspend or deny renewal of a license of a registered nurse" if the board finds that the registered nurse has engaged in "misconduct or unprofessional conduct."

7. Wis. Admin. Code § N 704 defines “misconduct or unprofessional conduct” as “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.”

8. Wis. Admin. Code § N 704(11) defines “misconduct or unprofessional conduct” to include the following conduct: Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient.”

9. The Respondent’s conduct described in Findings of Fact paragraphs 3 through 10 constituted misconduct or unprofessional conduct contrary to Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code §§ N 7.04 and 7.04(11). Thus, she is subject to discipline pursuant to 441.07(1)(d).

10. Pursuant to Wis. Stat. § 441.07(1)(c), the Board of Nursing has authority to “revoke, limit, suspend or deny renewal of a license of a registered nurse” if the board finds that the registered nurse has engaged in “[a]cts which show the registered nurse ... to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency”

11. Wis. Admin. Code § N 7.03(1) defines “negligence” as “a substantial departure from the standard of care ordinarily exercised by a competent licensee.”

12. The complaint contains insufficient facts on which to conclude that Respondent Stone negligent in patient care contrary to Wis. Stat. § 441.07(c) and Wis. Admin. Code § N 7.03(1).

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against her, Respondent Stone has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. The only issue that remains, then, is whether the admitted facts constitute violation of Wisconsin Administrative Code §§ N 7.04(11) and 7.03(1), subjecting Respondent Stone to discipline pursuant to Wis. Stat. § 441.07(1)(c) and (d).

The facts as admitted provide that Respondent Stone: (1) dated a patient (R.H.), (2) had an “abusive relationship” with that patient¹, (3) engaged in some abusive behavior with that patient at her place of employment/Oak Creek health office; (4) was warned by her employer that dating patients was inappropriate, but continued to do so; and (5) when her relationship with

¹ It is not clear from the Complaint what kind of abuse was involved, and/or who the abuser was. Because this order is pursuant to a motion for default, the complaint will be viewed in the light most favorable to the respondent. See *Metropolitan Ventures, LLC v. GEA Assocs.*, 2006 WI 71, ¶ 20, 291 Wis.2d 393, 717 N.W.2d 58.

patient R.H. deteriorated and her employer received an anonymous complaint that she was under the influence of drugs while at work², revealed to another employee nurse that patient R.H. probably made the bogus complaint as he was “out to get her,” and that she had wanted to commit suicide two weeks prior, assumedly because of her relationship with R.H. The Division proposes that such facts run contrary to N. 7.04 (misconduct or unprofessional conduct), N. 7.04(11) (inappropriate sexual behavior) and 7.03(1) (negligence), subjecting Respondent Stone to discipline pursuant to Wis. Stat. § 441.07(1)(d). Though the Division provides no argument as to whether having an “abusive” relationship with a patient after being warned against dating patients constitutes “inappropriate sexual contact, exposure, gratification, or other sexual behavior with ... a patient” (N 7.04(11)), the undersigned ALJ is convinced that such conduct is contemplated by N 7.04(11). At the very least, such conduct violates N. 7.04, which makes punishable “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....” Either way, Respondent Stone is subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

What’s less clear is whether this conduct constitutes “negligence” pursuant to Wis. Admin. Code § N. 7.03(1). While the Division assumes that it does, a review of N. 7.03(1) reveals that this section pertains to neglect in *patient care*. Because there are no facts alleged that suggest that Respondent Stone was remiss in her *care* of any patient, the undersigned ALJ will not find that Respondent Stone’s relationship with patient R.H. constituted negligence for which the Board may revoke, limit or suspend her license pursuant to Wis. Stat. § 441.07(1)9(c).³

Appropriate Discipline

The Division requests that the Respondent’s license to practice nursing be suspended for one year, with a limitation stating that Respondent Stone must be evaluated by a qualified mental health professional and receive a fitness to practice determination prior to returning to work. The Division further proposes that if the mental health professional recommends any limitations, the Board can impose those limitations as a condition of ending the suspension.

In support of this recommendation, the Division suggests that a one-year suspension is standard in cases of consensual sexual contact and provides two decisions in which it alleges similar facts and dispositions: (1) *In the Matter of Disciplinary Proceedings Against Claudia Greco, L.P.C.* (LS0801092CPC); and (2) *In the Matter of the Disciplinary Proceedings Against Nichole Pankow, D.C.* (LS0808141CHI). In actuality, the facts in both of the above decisions were more egregious than in the present case: In Greco, the respondent, a professional counselor, entered into a sexual relationship with a former patient (G.H.) whom she had been treating together with his partner of twelve years (C.R.) in couples counseling. She was aware of

² The complaint suggests she was not under such influence, as there was “no overt evidence of drugs.”

³ Arguably, Respondent Stone’s relationship with patient R.H. and/or expressed desire to commit suicide may contemplate “mental incompetency,” pursuant to Wis. Admin. Code §§ N 7.03(3). Because this argument was not made, it will not be considered.

G.H.'s feelings for her, and aware that C.R. suspected as much, but told C.R. not to worry. Despite this, G.H. terminated his therapy with the respondent so that he and the respondent could have a relationship. The respondent was aware of G.H.'s reasons for ending therapy, going so far as to discuss with him that the Professional Counselor's Code prohibited them from having a relationship for two years. Nevertheless, she entered into a sexual relationship with G.H. in a year's time.

Likewise, in Pankow, the respondent, a chiropractor, had numerous sexual encounters with a patient (R.B) she knew was depressed and taking medication for depression. Some of these sexual encounters took place during R.B's treatment sessions. Most disturbing, the respondent admitted that she was aware that patients can sometime develop feelings for their doctors and intentionally "played into this."

By comparison, Respondent Stone's conduct, as alleged, was not predatory. Nevertheless, she had a relationship with a patient after being warned not to, engaged in abusive behavior with that patient at her place of employment health office, where other patients could potentially observe, and has failed to cooperate in the proceedings against her in any way. In light of these facts, the Division's request of a one-year license suspension is not unreasonable.

The purpose of discipline is to (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar contact. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Respondent Stone's failure to participate in these proceedings suggests that she cannot be reasonably relied upon to comply with any Board order which might be considered in an effort to limit or monitor her contact with patients. Thus, the relief requested by the Division is appropriate and even necessary to protect the public from future instances of misconduct by the respondent. Moreover, Respondent Stone's relationship with patient R.H. involved some kind of abuse. This leads the undersigned ALJ to believe that rehabilitation is warranted, and agree with the Division that Respondent Stone should be evaluated by a qualified health professional and receive a fitness to practice determination prior to returning to work.

Costs

The Division requests that the Respondent be ordered to pay the full costs of its investigation and of these proceedings.

In support of this recommendation, the Division references *In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), which asserts, in relevant part:

The ALJ's recommendation and the ... Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder..., 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 respondents 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 licenses, 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;
- 7) Any other relevant circumstances.

The respondent, by nature of her being in default has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. To the contrary, her conduct is of a serious nature. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven (being none), or that certain factual findings were investigated and litigated that were unnecessary. Given the fact that the Department of Regulation and Licensing is a "program revenue," agency, whose operating costs are funded by the revenue received for licensees, fairness here dictates imposing the costs of disciplining the respondent upon the respondent and not fellow members of the chiropractic profession who have not engaged in such conduct."

For many same reasons as cited in the *Buenzli-Fritz* decision, Respondent Stone should be assessed the full amount of recoverable costs. Her alleged conduct is of a serious nature, there is no argument that certain factual findings were investigated and litigated unnecessarily, and given the program revenue nature of the Department of Regulation and Licensing, fairness again dictates imposing the costs of disciplining Respondent Stone on Respondent stone, and not fellow members of the nursing profession who have not engaged in such conduct. Payment of assessed costs will be necessary before the Respondent's license could be reinstated pursuant to Wis. Stat. § 441.07(2). If the Board assesses costs against the Respondent, these amount of costs will be determined pursuant Wis. Admin. Code § RL 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of the Respondent Linda S. Stone, R.N. to practice nursing in the State of Wisconsin be and is hereby **SUSPENDED** for a period of one year.

IT IS FURTHER ORDERED that the Respondent must be evaluated by a qualified mental health professional and receive a fitness to practice determination prior to returning to work/having her license reinstated.

IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. After the amount is established payment shall be made by certified check or money order payable to the Wisconsin Department of Regulation and Licensing and sent to:

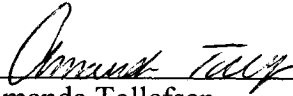
**Department Monitor
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Linda S. Stone.

Dated at Madison, Wisconsin on February 24, 2010.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____


Amanda Tollefsen
Administrative Law Judge

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