

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE BOARD OF NURSING

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IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST

JAMES R. FULLERTON, R.N.,  
RESPONDENT.

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FINAL DECISION AND ORDER

ORDER 0000301

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[Division of Enforcement Case No. 07 NUR 243]

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

James R. Fullerton, R.N.  
302 E. Wisconsin Avenue  
Barron, WI 54812

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 this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. James R. Fullerton, R.N., Respondent, date of birth May 29, 1932, was licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 35490-30, which was first granted September 18, 1959. Respondent did not renew his license when it expired February 28, 2010 but could do so by paying a late fee.
2. Respondent's last address reported to the Department of Regulation and Licensing is 302 E. Wisconsin Avenue, Barron, WI 54812.
3. Respondent is also licensed by the Medical Examining Board as a physician assistant and at the time of these events employed as an RN, physician assistant anesthetist at Barron Medical Center in Barron, Wisconsin.

4. Respondent first met Mr. A in 2002, when they resided near each other. Mr. A was hospitalized at Luther Hospital in Eau Claire on April 9, 2003. Mr. A was then 33 years old and was diagnosed with end stage liver disease, resulting from past alcohol and substance use. He was not a transplant candidate.

5. Over the next few years, Respondent assisted Mr. A, without compensation, by transporting him to doctors' appointments and by providing him with home health care. Mr. A received health care at Midelfort - Luther in Eau Claire, Gundersen Lutheran in La Crosse, Marshfield Clinic in Marshfield, Mayo Clinic in Rochester, MN, and the University of Wisconsin Hospital and Clinics in Madison.

6. Respondent recommended that Mr. A see a physician in Rice Lake. Beginning February 22, 2006, Respondent assisted Mr. A in obtaining prescriptions from the physician for Androderm (testosterone transdermal system) for Mr. A's erectile dysfunction and to increase his sex drive. That physician also performed hernia surgery on Mr. A and Respondent provided the anesthesia for the surgery. The physician also provided other treatment and prescribed medications to Mr. A.

7. In April 2006, Respondent co-signed a loan for Mr. A to purchase a trailer home residence in Rice Lake and provided the down payment. Respondent also purchased an automobile, a Harley Davidson motorcycle, a flat panel television and a computer for Mr. A to use and provided him with cash. Mr. A contended that Respondent frequently made sexual advances towards Mr. A, which Mr. A rejected. Respondent denies making sexual advances toward Mr. A.

8. Mr. A told Respondent that he was having trouble sleeping and asked if Respondent could obtain something to help him sleep. Respondent began diverting midazolam from the operating room. Midazolam is a short acting benzodiazepine, which is a schedule IV controlled substance used for procedural sedation and for the induction of general anesthesia. Respondent diverted the medication by administering less than a full syringe of medication to surgical patients and not returning or wasting the remainder but instead providing it to Mr. A. Respondent would then inject Mr. A with the drug. Mr. A did not have the order of a practitioner for the drug.

9. Mr. A's health deteriorated and he was hospitalized in August and October 2006. Respondent obtained IV bags and brought them to Mr. A's home and administered them to Mr. A. On November 24, 2006, a certificate of limited life expectancy was signed regarding Mr. A.

10. On June 6, 2007, Mr. A surreptitiously made an audio tape recording of a conversation between Respondent and Mr. A. In that conversation, Respondent described how he diverted controlled substances from the operating room to provide them to Mr. A.

11. On August 1, 2007, law enforcement officials shared the recording with administrators at Barron Medical Center, who confirmed it was Respondent's voice. Respondent's employment was then terminated. On August 15, 2007, Respondent's locker at the Medical Center was searched by administrative staff. The locker contained medications for which Respondent had no order of a practitioner and included, among other things:

- a. Partially filled 5 mg. vial of midazolam.

b. 10 glass vials of flumazenil, a benzodiazepine antagonist of benefit to patients who become excessively drowsy after benzodiazepines are used for diagnostic or therapeutic procedures

c. Empty package of Androderm (testosterone transdermal system) prescribed by a physician to Mr. A for erectile dysfunction.

d. Yellow tablet of Cialis, medication for erectile dysfunction.

e. 4 mostly empty glass vials labeled phenylephrine HCL

f. 4 full syringes labeled as lidocaine, one of which contained phenylephrine.

g. 2 glass vials labeled glycopyrrolate, a preoperative medication.

12. On November 28, 2007, Respondent was charged in Barron County Circuit Court with second degree sexual assault. The charge was based on Mr. A's allegations that on numerous occasions over the years Respondent attempted to reach into Mr. A's pants to touch his penis, that Mr. A rebuffed these attempts and that in May, 2007, Mr. A awoke and discovered that Respondent had his hands on Mr. A's penis without Mr. A's consent. Respondent denied and continues to deny all those allegations. Respondent was released on bond which had a condition that he not have contact with Mr. A.

13. On January 2, 2008, Respondent was charged in Barron County Circuit Court with:

a. Violating Wis. Stat. § 940.42, Intimidation of a witness for allegedly maliciously attempting to dissuade a witness (Mr. A) from giving testimony. The criminal complaint states that Mr. A turned over to the police a copy of a phone message left by Respondent on December 7, 2007 that said "(Respondent) had pictures of (Mr. A) holding 'it' and he was going to show them to the court but he wanted to know if he should show them to (Mr. A's) mother first."

b. Two counts violating Wis. Stat. § 946.49(1)(b), bail jumping. A condition of Respondent's December 17, 2007 bond was that he have no contact with Mr. A and the criminal complaint alleges that Respondent left two telephone messages for Mr. A on December 29, 2007.

14. On December 10, 2008, the count alleging intimidation of a witness was dismissed. On December 19, 2008, a jury trial was held on the counts of alleged bail jumping and Respondent was found guilty of both counts. On March 17, 2009 Respondent was sentenced to 3 years probation, which included 30 days in jail to be served at a later date. The jail sentence has been served.

15. Wis. Stat. § 946.49(1)(b), bail jumping is a crime substantially related to practice under Respondent's license.

#### 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. Respondent, by administering, supplying or obtaining a drug other than in the course of legitimate practice and as otherwise prohibited by law, has committed unprofessional conduct as defined by Wis. Admin. Code § N 7.04(2) and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

3. Respondent, by violating a law which substantially relates to practice under his license, has committed unprofessional conduct as defined by Wis. Admin. Code § N 7.04(1) and is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

1. The SURRENDER by James R. Fullerton, R.N. of his license to practice professional nursing in the state of Wisconsin and his right to renew that license is hereby ACCEPTED.

2. If Respondent ever makes application to the Board for any credential:

a. Respondent shall provide proof sufficient to the Board that he does not suffer from any condition which would interfere with his practicing with reasonable safety and skill.

b. Whether to grant a license and whether to impose any limitations or restrictions on any license granted shall be in the discretion of the Board

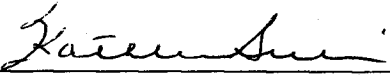
c. Respondent shall, prior to becoming licensed, pay to the Department of Regulation and Licensing costs of this proceeding in the amount of \$1,180.00 pursuant to Wis. Stat. § 440.22(2).

3. 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

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

BOARD OF NURSING

By:   
Member of the Board

7/22/10  
Date

T:MAAB\Zwieg\NUR\Fullerton