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Before The
State Of Wisconsin
Board of Nursing

In the Matter of the Application for a License of
SHEILA E. NOVIN, Applicant

FINAL DECISION AND ORDER
Order No. ORDER 0000701

Division of Enforcement Case No. 10 NUR 234

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 the 24th day of February 2011.

A handwritten signature in black ink, appearing to read "Katherine...", written over a horizontal line.

Member
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Application for a License of
SHEILA E. NOVIN, Applicant

DHA Case No. DRL-10-0046

Division of Enforcement Case No. 10 NUR 234

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

Sheila E. Novin, by

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Wisconsin Board of Nursing
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Department of Regulation and Licensing, Division of Enforcement, by

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PROCEDURAL HISTORY

The procedural matters leading up to this decision are as follows:

On March 8, 2010, Sheila E. Novin, applied for the “re-registration of [her] registered nurse license” in the state of Wisconsin.¹ (Exhibit 4). Ms. Novin’s application was linked to a

¹ Ms. Novin’s license to practice as a registered nurse was revoked by the Wisconsin Board of Nursing on April 24, 2006, after she pled guilty and was convicted in the U.S. District Court for the Eastern District of Wisconsin of three (3) counts of health care fraud, contrary to 18 U.S.C. §§ 1347, and one (1) count of illegal remuneration, contrary to 42 U.S.C. §§ 1320(a)-7(b)(2)(B)). See Findings of Fact ¶¶ 5 – 10, *infra*. Ms. Novin pled guilty to having received payment from nursing homes and other health care facilities for services provided to Medicare and Medicaid patients by her temporary nursing service business after Ms. Novin was excluded from participation in these programs for knowingly falsifying medical records and billing for services she did not provide. Ms Novin further

Stipulation and Proposed Order Granting Reinstatement (“Stipulation and Proposed Order”) that Ms. Novin and her attorney (Brad Hoeschen) had reached with Department of Regulation, Division of Enforcement (“Division”) prosecutor Arthur Thexton in *In the Matter of a Petition for an Administrative Injunction Involving Sheila E. Novin*, DOE case number 09 UNL 95, in which Ms. Novin was accused of providing foot care² without credential. (Exhibit A). Per the Stipulation and Proposed Order, Ms. Novin’s reinstated license was to be limited to allow her to practice exclusively as a foot care provider, as defined in footnote 2, and forbid her from billing any third party.

Both Ms. Novin’s attorney and Attorney Thexton appeared in front of the Wisconsin Board of Nursing (Board) on March 25, 2010, to speak in support of the Stipulation and Proposed Order.

Even so, the Board denied Ms. Novin’s March 8, 2010 application for re-registration on April 27, 2010. (Exhibit 5). In its “Reasons for Denial,” the Board recounted Ms. Novin’s past criminal and disciplinary conduct, which resulted in the revocation of her license to practice nursing in 2006.

On or about June 3, 2010, Ms. Novin filed a timely request for administrative hearing on the denial of her registered nurse license. (Exhibit 6).

On or about June 22, 2010, the Department of Regulation and Licensing granted and provided appropriate notice of applicant Novin’s request for a hearing. The notice identified the issue for consideration at the hearing on the denial of Ms. Novin’s application as follows:

Was the Board’s denial of licensure to Applicant based upon a mistake of fact or law, or was it arbitrary or capricious, under the facts of this case.

Pursuant to due notice, the contested case hearing in this matter was held at the Department of Regulation and Licensing, 1400 East Washington Avenue, Madison, WI, on August 24, 2010, Administrative Law Judge Amanda Tollefsen presiding.

FINDINGS OF FACT

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

1. Sheila E. Novin, (dob 3/2/61) resides at 11117 N. Range Line Rd., Mequon, WI 53092-4948, and was formerly a professional nurse licensed in the State of Wisconsin (license # 95261), from 8/22/86 through 4/24/06, when her license was revoked by Order of the Board of

pled guilty to having offered and paid money to an employee at a health care facility to induce the employee to order and arrange for services from her businesses.

² Foot care has been defined by both parties to include the cleaning of feet, trimming of toenails, exfoliating the skin including callus reduction, providing self-care advice, and referral when indicated. (Petitioner’s Exhibit A, Stipulation for Reinstatement and (Proposed) Order Granting Reinstatement, Division’s Exhibit 3, Final Decision and Order (Administrative Injunction) in Case Number 09 UNL 36/95.

Nursing in file 03 NUR 131. She currently does not hold any other license from any credentialing authority attached to the Department of Regulation & Licensing, or from the Department itself, but has training as a medical assistant.

2. On June 26, 1996, Ms. Novin was convicted in Milwaukee County Circuit Court of three counts of knowingly falsifying the medical records of a medical assistance recipient with the intent to defraud, a violation of Wis. Stat. § 943.39(1), and one count of knowingly and willfully billing medical assistance for services that she did not provide, a violation of Wis. Stats. §§ 49.49(1)(a)1 and 49.49(1)(b)1. When one or more of the nurses she employed did not submit documentation with respect to a particular patient, Ms. Novin forged medical records and attached previously taken vital signs for three undocumented patient visits which she did not provide. (Tr. 45-6, 97-8).

3. On March 16, 1997, Ms. Novin was excluded under § 1128(a)(1) of the Social Security Act from participation in the Medicare, Medicaid, and all Federal health care programs as defined in § 1128b(f) of the Social Security Act. Because of this exclusion, Ms. Novin was prohibited from seeking payment from Medicaid and Medicare for any services that she provided after March 16, 1997.

4. On May 1, 1997, Ms. Novin was disciplined for the actions set forth in ¶3 above, in file 96 NUR 31. Ms. Novin's license was limited to require supervision and independent verification of hours worked, 100 hours of community service, and eight hours of continuing education in nursing laws and ethics. Her unlimited license was restored on August 15, 1998.

5. From September 1997 through March 2002, Ms. Novin set up and operated a series of businesses that provided temporary nursing services to patients, including Medicare and Medicaid beneficiaries, residing at nursing homes and other health care facilities.

6. On December 9, 2002, Ms. Novin pled guilty and was convicted in U.S. District Court for the Eastern District of Wisconsin, in case 02-CR-193, of health care fraud, contrary to 18 U.S.C. §§ 1347 and 2, and illegal remuneration, contrary to 42 U.S.C. §§ 1320(a)-7b(b)(2)(B).

7. Per her plea:

a. Ms. Novin personally provided nursing services to Medicare and Medicaid beneficiaries at nursing homes and other health care facilities. Ms. Novin used the names Sheila Smith (a former name) and Sheila Novin-Smith when working as a nurse on behalf of her business.

b. Ms. Novin submitted invoices to and received payment from nursing homes and staffing businesses. These invoices included charges for nursing services provided to Medicare and Medicaid patients residing at those facilities. The nursing homes and other

health care facilities, to which Ms. Novin submitted invoices, sought and obtained payment from Medicare and Medicaid for services Ms. Novin and others working for Ms. Novin's business provided.

c. Ms. Novin concealed and failed to disclose the fact that she had been excluded from Medicare and Medicaid and was, therefore, prohibited from seeking payment from Medicare and Medicaid for services she provided.

d. Ms. Novin offered and paid money to an employee at a health care facility who was responsible for scheduling temporary nursing services at the facility, to induce the employee to order and arrange for services from the Ms. Novin's businesses.

e. Ms. Novin and her businesses received in excess of \$1.2 million from nursing homes and other health care facilities for providing temporary nursing services to patients including Medicare and Medicaid beneficiaries.

f. Ms. Novin was sentenced to thirty-three months in federal prison, ordered to pay a \$200.00 assessment, and ordered to pay restitution in the amount of \$351,600.

8. In 2006, the Board of Nursing held a Class 2 disciplinary hearing against Ms. Novin for her misconduct, violations of law, and unprofessional conduct. The Administrative Law Judge (ALJ) William Black, who conducted the hearing on behalf of the Board, stated the Ms. Novin devoted a good portion of her answer and her testimony at the hearing trying to explain away or rationalize the findings of fact underlying her fraud conviction. The ALJ noted that Ms. Novin tried to minimize her conduct by framing it as misunderstandings by others or confusion on her part.

9. That ALJ found that the Ms. Novin's efforts to explain away her conduct did not demonstrate that she had taken full responsibility for her actions. The ALJ stated that "her pattern of conduct is clear, stretching back to 1996, that she knows how to commit fraud on the health care system and had continued to do so until her latest conviction." The ALJ concurred with the description by the Division of Enforcement attorney that Ms. Novin's explanations were akin to "I provided you the opportunity to catch me and you didn't." The ALJ concluded that Ms. Novin knew all too well how to work the system and the complexity of her tale is part of her ongoing attempt to cover up the guilt for her actions. The ALJ noted that the Board had already given the Ms. Novin a second chance by allowing her to continue to practice nursing after her first conviction for fraud in 1996, and she had not shown any reason to be trusted one more time.

10. On April 20, 2006, the Board of Nursing adopted the proposed decision of the Administrative Law Judge which recommended revocation of Ms. Novin's license as the only viable option to protect the public and to send a strong message to deter other licensees from engaging in similar conduct. The Board also imposed the full costs of the proceeding against

Ms. Novin. The record shows that Ms. Novin did not pay the assessed costs after her license was revoked.

11. The Board order revoking Ms. Novin's license did not include any terms of conditions regarding possible reinstatement of her license in the future.

12. In 2008, Ms. Novin became employed by a licensed professional nurse providing services to clients which consisted of traveling to various senior centers in the greater Milwaukee area and providing "foot assessments," which included cleansing of the feet, trimming toenails, exfoliating the skin including callus reduction, providing foot self-care advice, and referral when indicated.³ When Ms. Novin first began doing this, she disclosed her revocation to her employer, and worked as an employee of the licensed nurse, who was in a position to review her work and who was responsible for the services provided. These services are paid for in cash at the time of service by the clients receiving them, and do not involve any billing or third party players.

13. In 2009, Ms. Novin's employer developed a health problem and wished to move to central Wisconsin; Ms. Novin then purchased the business and began to provide these services on her own, without supervision or oversight.

14. Following an incident in which the toe of a brittle diabetic was inadvertently cut by Ms. Novin, a physician reported Ms. Novin's business activity to the Department, which commenced an investigation (09 UNL 95) and filed a Petition to enjoin Ms. Novin from engaging in this foot care activity without a license as a nurse, a manicurist, a podiatrist, or except as otherwise permitted by law.

15. Ms. Novin desires to reinstate her nursing license, so that she may continue to provide these services.

16. On March 8, 2010, Ms. Novin submitted an application for re-registration of her RN license, with a stipulation and proposed order granting reinstatement, subject to various conditions and exclusively restricting her practice to patient foot care.

17. Ms. Novin's attorney and the Division of Enforcement prosecutor appeared before the Board on March 25, 2010, to speak in support of the stipulation and proposed order. Ms. Novin was not required to appear, and did not appear. The Division of Enforcement attorney indicated that the restrictions on Ms. Novin's license would be permanent. However, Ms. Novin's attorney indicated that his client was interested in obtaining full licensure, but would agree to limit her practice to a cash-only foot care service until she decided to petition for removal of the limitations of her license.

³ At hearing, Ms. Novin claimed that she did not provide "foot assessments," as she was not a nurse. However, she agrees that she performed most of the duties "foot assessments," are asserted to include – namely, foot cleaning, toenail trimming, and skin and callus exfoliation. (Tr., pp. 74-76).

CONCLUSION/S OF LAW

1. The Board's denial of licensure to Applicant was not based upon a mistake of fact or law, nor was it arbitrary or capricious, under the facts of this case.

2. The Board's decision to reinstate a revoked license is discretionary. Wis. Stat. § 441.07(2). *See also* Wis. Stat. § 227.01(3)(a).

3. Per Wis. Admin. Code RL 1.08(4), "the applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential."⁴

4. Ms. Novin has failed to demonstrate that her re-licensure is in the best interests of public health, safety and welfare, given her recidivist history and her demonstrated inability to comply with the law as shown by the current allegations of unlicensed foot care activity.

DISCUSSION

Ms. Novin argues that the Board's decision to deny her re-application for a license to practice nursing was arbitrary and capricious because two of the reasons it gave for the denial of her application were, in her opinion, improper. Namely, Ms. Novin took offense to the fact that the Board included in its "Statement of Reasons for Denial" the fact that (1) she did not appear in person before the Board on March 25, 2010, to speak in support of the Stipulation and Proposed Order, and the fact that (2) her attorney indicated that she was interested in obtaining full licensure, but would agree to limit her practice to a cash-only foot care service until she decided to petition for removal of the limitations to her license. (Tr., pp. 15-17). Ms. Novin argues that it was wrong for the Board to consider these specific pieces of information, because (1) her appearance before the Board was not required (and was, in fact, discouraged by Division prosecutor Arthur Thexton), and (2) there is no specific rule that allows the Board to consider a petitioner's future intentions with respect to licensure. (Tr., pp. 16-17). According to Ms. Novin, the Board should have instead accredited (1) the very narrow restraints under which her license was to be returned to her (*see supra*), (2) the facts that she had completed the requisite continuing education, paid the necessary fees, and insured "Solefully Yours" from the date of purchase, and (3) the fact that she paid her debt to society, and had never received any complaints or discipline with respect to patient care.⁵ (Tr. pp. 18-19, 107-08). Ms. Novin

⁴ The requirements for licensure as a registered are set out in Wis. Stat. Ch. 441, subchapter 1 (specifically, Wis. Stat. § 441.06) and Wis. Admin. Code Ch N 1-8. Because neither party referred to these requirements and/or provisions at hearing, they will not be considered at any length.

⁵ In her "request for administrative hearing" (Exhibit 6), Ms. Novin further noted that the Board should have (1) considered that she had previously held a license as a licensed practical nurse for which she never received any discipline for, and (2) the impact of, and her remorse for her prior acts, of which the Board failed to question her attorney about, but relied upon in making its decision. Although Novin characterized these omissions as "mistakes of facts" – upon cross examination, she admitted that there were no mistakes of fact contained within the Board's Statement of Reasons for Denial. (Tr. pp. 66-86, *see also* Exhibit 5).

maintains that by failing to consider these factors, the Board violated the standards set out for it in Wis. Stat. § 441.70(2)(sic)⁶ and 440.08(3)(sic)⁷.

While it is clear that Ms. Novin does not agree with the Board's decision to deny her license, nor the weight it accredited to her prior acts as opposed to the narrow restraints of her proposed license, she has failed to demonstrate any mistake of law or fact upon which the Board's decision may be overturned, or that the Board's denial of her license was "arbitrary and capricious."

The Board's stated basis for denying Ms. Novin's application for re-registration of her registered nurse license was that, "she has failed to demonstrate that her re-licensure is in the best interests of the public health, safety and welfare, given her recidivist disciplinary history and her demonstrated inability to comply with the law as shown by the current allegations of unlicensed foot care." (See Exhibit 5).

Though the Board's "Statement of Reasons for Denial" does, in fact, note that (1) Ms. Novin did not personally appear before the Board on March 25, 2010, and (2) that her attorney indicated that she wanted to use the limited powers her proposed license would give her to show that she had rehabilitated, and in the future, reapply for all of the privileges given to her under her registered nursing license, even a cursory reading the Board's Notice of Denial evinces that these incidents were not the reason for Board's denial of Ms. Novin's application.⁸ Rather, the Board's "Statement of Reasons for Denial" confirms that the Board's reasons for denying Ms. Novin's application for licensure as a registered nurse were indeed "her recidivist disciplinary history and her demonstrated inability to comply with the law as shown by the current allegations of unlicensed foot care." It was entirely proper for the Board to base its decision on these factors:

⁶ It is obvious from the context in which Ms. Novin cited this statute that she meant to assert Wis. Stat. § 41.07(2), which provides that "[t]he board may reinstate a revoked license...."

⁷ It is again obvious from the context of the hearing that Ms. Novin meant to assert Wis. Stat. § 440.08(4). Wis. Stat. § 440.08(4), *Credential Renewal*, (emphasis added), provides, in relevant part: If the ... interested examining board or affiliated credentialing board... determines... that the denial of an application for renewal of a credential is necessary to protect the public health, safety or welfare, the ... examining board or affiliated credentialing board may summarily deny the application for renewal...." Despite the similarities in language between this provision and the language cited in the Board's denial of Ms. Novin's application for licensure, it does not appear that Wis. Stat. § 440.08(4) is applicable. Wis. Stat. § 440.08(4) applies to the denial of applications for *renewal* of a credential, and Wis. Admin. Code § RL 1.01 specifically provides that "[r]ules in this chapter do not apply to denial of an application for renewal of a credential. Nevertheless, there is no doubt that an examining or affiliated credentialing board may consider public safety when reviewing an application for licensure. Indeed, that is the whole purpose of the licensing scheme. See *Gilbert v. State Medical Examining Board*, 119 Wis.2d 168, 188, 349 N.W.2d 68, 77.

⁸ Even if the Board did consider these factors, however, Ms. Novin has cited no authority, beyond her own *ipse dixit* arguments, that such considerations are improper. It is not this court's function to supply legal research and develop the appellant's argument. See *State v. Waste Management*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978). In the absence of any authority supporting Novin's arguments that it is improper for the board to consider the fact that Novin did not appear in front of the board on March 25, 2010, to speak in support of the stipulation and proposed order, and that it was improper for the board to consider prior acts when did not inquire about them, it will be assumed that such considerations are proper.

The Board's decision to grant or deny licensure is discretionary. *See* Wis. Stat. § 441.07(2), Wis. Stat. § 227.01(3)(a). Moreover, licenses are granted for the protection of public, and not for benefit of licensee. *Gilbert v. State Medical Examining Board*, 119 Wis.2d 168, 188, 349 N.W.2d 68, 77.

There is no dispute that Ms. Novin has repeatedly violated the rules that govern her professional activity, in the past receiving money she was not entitled to, and more recently purchasing a business providing services she had no license to provide.⁹ These facts support that the Board had every reason to be nervous about granting Ms. Novin a license to practice nursing, even if it did limit Ms. Novin to providing "foot care." Ms. Novin's proposed license would have allowed her to engage in a cash only business with elderly clients. Her repeated inability to follow the rules in matters of business, however, does not demonstrate that her re-licensure was in the best interests of these clients.

That being said, the undersigned ALJ did find Ms. Novin's testimony that she has learned from her past mistakes, and would like to move on with her life and be a productive member of society credible. She further finds it noteworthy that Division Prosecutor Arthur Thexton believed Ms. Novin was deserving of a limited nursing license, and urges the Board to consider these factors in future licensure applications by Ms. Novin.

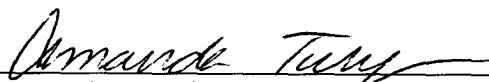
ORDER

IT IS THUS ORDERED, effective the date of this Order, that the March 25, 2010, denial of the re-application of Sheila E. Novin for a registered nurse license is **AFFIRMED**.

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Petitioner Sheila E. Novin.

Dated at Madison, Wisconsin on September 22, 2010.

STATE OF WISCONSIN
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By: 
Amanda Tollefsen
Administrative Law Judge

⁹ Ms. Novin's argument that she was unaware that she needed to have a license to perform "foot care" is unavailing. While this may very well have been the case, after two disciplinary hearings and several criminal convictions that centered around her business practices, she had an obligation to find out.