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

In the Matter of the Disciplinary Proceedings Against
CHANTHA VONG, R.N., Respondent

FINAL DECISION AND ORDER

ORDER 0000881

DHA Case No. DRL-10-0062

DOE Case No. 10 NUR 080

Division of Enforcement Case No. 10 NUR 080

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

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PROCEDURAL HISTORY

These proceedings were initiated on September 16, 2010, when the Department of Regulation and Licensing, Division of Enforcement, (the "Division"), filed a formal Complaint against Respondent Chantha Vong, R.N., alleging that on or about September 12, 2008, Respondent Vong invited a 14-year-old neighbor boy into her apartment, repeatedly told him she wanted to have sex with him, rubbed his genital area through his clothes, jumped upon and

straddled him after he told her he did not want to have sex with her, and told him not to tell anyone what had happened after he was eventually able to pry her legs off of him and leave her apartment. The Division's Complaint contended that Respondent Vong's alleged conduct violated Wis. Admin. Code §§ N 7.03(2) (impaired ability to practice) and 7.04(1) (misconduct by violation of law substantially related to the practice of nursing), subjecting her to discipline pursuant to Wis. Stat. §§ 441.07(1)(c) and (d).¹

On or about October 4, 2010, Respondent Vong filed an Answer to the Division's Complaint admitting the above allegations, but denying that her conduct violated either Wis. Admin. Code § N 7.03(2) or Wis. Admin. Code § 7.04(1). A Prehearing Conference was held by telephone on October 19, 2010, Amanda Tollefsen, administrative law judge, presiding. The parties agreed that all factual allegations were stipulated, and the only question that remained was whether Respondent Vong's conduct, as admitted, violated Wis. Admin. Code §§ N 7.03(2), and 7.04(1), subjecting her to discipline pursuant to Wis. Stat. §§ 441.07(1)(c) and (d). The administrative law judge determined that there was no need for a contested case hearing, and a briefing schedule was ordered, with the Division's brief in chief due on December 17, 2010, Respondent Vong's responsive brief due no later than January 17, 2011, and the Division's reply brief due no later than February 2, 2011. As of February 1, 2011, the parties' briefs were all received.

On May 5, 2011, the Wisconsin Board of Nursing reviewed the Proposed Decision of the ALJ. Upon reviewing the Findings of Fact, Conclusions of Law and Discussion portions of the ALJ's proposed decision, the Board of Nursing, acting as the final disciplinary authority in this matter, finds good cause for issuing a variance to the disciplinary recommendations. Accordingly, for the reasons described in the "Explanation of Variance," the Board hereby orders that this Final Decision and Order shall be and hereby is the Final Decision of the State of Wisconsin, Board of Nursing, in this matter.

FINDINGS OF FACT

On the evidence presented, the ALJ made the following findings of fact:

1. Chantha Vong, R.N., (DOB 07/07/1980), is duly licensed as a registered nurse in the State of Wisconsin (license # 30-149844). This license was first granted on April 14, 2005.
2. Respondent Vong's most recent address on file with the Wisconsin Board of Nursing is 820 Willow Brook Trail, Sun Prairie, Wisconsin 53590-3462. Her current address is 820 Troy Drive, Madison, WI 55704.

¹ Respondent pled no contest to fourth degree sexual assault, intimidating a victim/dissuading reporting, and disorderly conduct for her above conduct. She has admitted to having a drinking problem, and asserts that she was inebriated on the evening in question.

3. On or about September 12, 2008, Respondent Vong invited a 14-year-old neighbor boy into her apartment. After he entered, she locked the door and tried to embrace him. He pushed her away. She rubbed his genital area through his clothes and said, "I want to fuck you." He asked her to stop and said he did not want to do this.

4. Instead of stopping, Respondent Vong jumped up on the boy, straddling him and holding herself off the ground with her legs around his waist. The boy asked her to get off him and again said he did not want to do this. She said, "I want to fuck you." He attempted to pry her off of him. She locked her legs and began moving up and down, attempting to rub on him.

5. Eventually the boy was able to pry the Respondent Vong's legs off and left. As he left, Respondent Vong followed him, and said, "Don't tell anyone. Don't tell your mother." Approximately ten minutes later, she texted him. Her first text said "Wtf?" The second text stated, "I'm sorry, Just 4get 2nite." The last text said, "Seriously."

6. When confronted by police, Respondent Vong stated, "I have a drinking problem, Friday night I was drunk. I don't remember exactly what happened, but the neighbor kid was in my apartment and I remember jumping on him and said something about wanting to have sex with him. He said he was going to tell his mom, and at that point I realized something wrong happened.

7. Respondent Vong pled no contest to fourth degree sexual assault, intimidating a victim/dissuading reporting, and disorderly conduct. She was sentenced to three years of probation.

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. The burden of proof in disciplinary proceedings before the department or any examining board, affiliated credentialing board or board in the department is a preponderance of the evidence. Wis. Stat. § 440.20(3). *See also*, Wis. Admin. Code HA 1.17(2), ("[u]nless the law provides for a different standard, the quantum of evidence for a hearing decision shall be by the preponderance of the evidence.").

3. "Preponderance of the evidence" is defined as the greater weight of the credible evidence. Wis. Admin. Code § HA 1.01(9).

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

5. Wis. Admin. Code § N 7.04(1) defines “misconduct or unprofessional conduct” to include “[v]iolating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing.”

6. In determining whether a particular violation is “substantially related,” to the duties of the credentialed activity, “ [i]t is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person.” *County of Milwaukee v. LIRC*, 139 Wis.2d 805, 821-24, 407 N.W.2d 908 (1987).

7. 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...or may reprimand a registered nurse...,” if the board finds that the registered nurse has engaged in “acts which show the registered nurse... to be unfit or incompetent by reason of ... abuse of alcohol or other drugs....”

8. Wis. Admin. Code § N 7.03(2) defines “abuse of alcohol or other drugs” as “the use of alcohol or any drug to an extent that such use impairs the ability of the licensee to safely or reliably practice.”

9. The conduct described in paragraphs 3-7 of the Findings of Fact constitutes a violation of Wis. Admin. Code § N 7.04(1), and thereby subjects Respondent Vong to discipline pursuant to Wis. Stat. § 441.07(1)(d).

10. The conduct described in paragraph 6 of the Findings of Fact constitutes a violation of Wis. Admin. Code § N 7.03(2), and thereby subjects Respondent Vong to discipline pursuant to Wis. Stat. §§ 441.07(1)(c).

DISCUSSION

Violations of Statutes and Administrative Code:

The burden of proof in this case was on the Division. As such, it was required to prove, by a preponderance of the evidence, that: (1) the circumstances of Respondent Vong’s undisputed violations of law are substantially related to the practice of nursing, in violation of Wis. Admin Code § N 7.04(1); and, (2) Respondent Vong, by her admitted drinking problem and assertion that she was drunk at the time of her offense, uses alcohol to such an extent that such use impairs her ability to safely or reliably practice, in violation of Wis. Admin Code § N 7.04(1). The Division has met this burden.

Wis. Admin. Code § N 7.04(1), (Misconduct by Violation of Any Law Substantially Related to the Practice of Nursing)

Wis. Stat. § 111.331 prohibits employment discrimination, (defined in § 111.322 to include refusing to license an individual), on the basis of a conviction record. Indeed, “[i]t is highly desirable to reintegrate convicted criminals into the workforce, not only so they will not... become public charges, but to turn them away from criminal activity and hopefully to rehabilitate them.” (*Id.*)

An exception, however, exists in § 111.335(1)(b), which says “notwithstanding § 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to suspend from employment or licensing, any individual who has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity....” (*See also* Wis. Admin. Code § N 7.04(1)).

Exactly what constitutes an offense, “the circumstances... of which substantially relate to the circumstances of [a] particular job or licensed activity,” has been the subject of much litigation and debate, this case being no exception.

In *County of Milwaukee v. LIRC*, 139 Wis. 2d 805, 407 N.W.2d 908 (1987), the Wisconsin Supreme Court rejected a factually based determination of “substantially related circumstances” in favor of a test that involves, “assessing whether the tendencies and inclinations to behave in a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed.” The Court continued, “It is the circumstances which foster criminal activity that are important, *e.g.*, the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person.” *Id.* at 824 (1987). Applying this standard to the facts in that case, the Court found that the respondent’s past convictions for negligence in maintaining a nursing home were substantially related to his duties as a crisis intervention specialist for a mental health “hot line,” because “[t]he responsibilities present in both jobs extended to a group of people similarly situated so that neglect or dereliction of duties in either job would likely have similar consequences.” *Id.* at 828. *See also Gibson v. Transportation Commission*, 106 Wis. 2d 22, 315 N.W. 2d 346 (1982), (finding applicant’s conviction for the offense of armed robbery constituted circumstances substantially related to school bus driver licensure, as conviction indicates a disregard for both the personal and property rights of other persons, and a propensity to use force or the threat of force to accomplish one’s purpose, which are contradictory to the extreme patience, level-headedness and avoidance of the use of force essential for a school bus driver); *Law Enforce. Stds Bd. v Lyndon*, 101 Wis. 2d 472, 305 N.W. 2d 346 (1982).

The parties do not dispute that in determining whether a violation of law is substantially related to the circumstances of an offender’s practice, it is the “ability to accurately predict the likelihood that unacceptable action will happen again that is pertinent.” (Respondent’s Brief on the Substantial Relationship of the Conviction to the Practice of Nursing, p. 2, ¶ 2; *c.f.* State’s Brief on the Substantial Relationship of the Conviction to the Practice of Nursing, p. 3, ¶¶ 3-4) How they applied this legal standard to the circumstances in this case, however, was quite different.

The Division argued that like the defendants in *County of Milwaukee* and *Gibson*, Respondent Vong has exhibited character traits that are inconsistent with nursing, which it asserts

requires trustworthiness and respect of others, and carries enormous responsibilities for the health, safety and welfare of vulnerable people. (State's Brief in Chief, p. 4. ¶ 3). Specifically, the Division argued that Respondent Vong's conduct in (1) having sexual contact with a 14-year old boy without his consent², and then (2) attempting to dissuade him from reporting her behavior to anyone, shows an extreme disregard for the rights, space and safety of others, and a tendency to selfishly cover up her wrongdoing at the expense of, in this case, a child's mental and emotional safety. (State's Brief in Chief, p. 4, ¶¶ 4-5). It further argued that Respondent Vong's claims that she had a drinking problem, and was drunk at the time she engaged in the above behavior, "renders her conviction even more substantially related to [her] practice, as alcoholism is a disease fraught with recidivism." (*Id.*, p. 6, ¶ 1; *see also* <http://alcoholism.about.com/cs/alerts/blnaa06.htm>).³ Finally, it argued that the Wisconsin Supreme Court has already recognized the connection between child "molestation" and "professionalism," upholding the suspension of a license of a U.S. attorney who, on his own time, had consensual sexual activity with a 14-year-old boy who lied about his age, in violation of SCR 20.04(3)⁴, "Misconduct." (State's Brief in Chief, p. p. 7, ¶ 2, discussing *In the Matter of Disciplinary Proceedings Against Martin*, 112 Wis.2d 661, 334 N.W. 2d 107).⁵

Respondent Vong, on the other hand, argued that the circumstances of her convictions are not substantially related to the practice of nursing because they did not involve the professional field she is licensed to serve – patients – in contrast to *County of Milwaukee, Gibson*⁶, and *Law Enforce. Stds. Board v. Lyndon Station*, 101 Wis. 2d 472, 305 N.W. 2d 346 (1982), on which the Court relied in *Gibson*. (Respondent's Brief, ¶¶ 6-9). She further tried to distinguish the circumstances of her case from those relied on by the Division by noting that: (1) she had no past offenses, in contrast to the respondent in *County of Milwaukee*, making her risk of recidivism less than certain, (*Id.* at ¶ 6); (2) she admitted that what she had done was wrong, in contrast to the respondent in the *Martin* case, (*Id.* at ¶ 10); and, (3) her crimes were misdemeanors, and not all that serious in contrast to (a) the respondent's crime in *In the Matter of Disciplinary Proceedings against Wallock* (2010), (found at <http://online.drl.wi.gov/decisions/2010/ORDER0000107-00004766.pdf>), in which the respondent nurse had consensual sexual contact, at times including sexual intercourse, with a child aged 15-16, and (b) other crimes with more serious penalties in the Wisconsin Criminal Code. (*Id.* at ¶¶ 11-13).

Respondent Vong's focus on how the specific facts of her criminal conduct compared to different cases relied upon by the Division is misguided. In addition to having cherry picked those cases that she could distinguish her behavior from, while ignoring those cases in which a respondent's violations of law were found to be substantially related to his or her license regardless of the facts that: (1) his or her crimes did not involve the specific population he or she

² See Wis. Stat. § 940.225(3m), Fourth Degree Sexual Assault

³ Indeed, so are rape and sexual molestation, *see Milwaukee County*, 139 Wis.2d 805, 915 FN3. The administrative law judge took judicial notice of these facts.

⁴ SCR 20.04(3), which has been revised into SCR 8.4, stated that a lawyer shall not: "(3) Engage in illegal conduct involving moral turpitude." There was no requirement that his illegal conduct be substantially related to the practice of law.

⁵ *See also Haley v. The Medical Disciplinary Board*, 818 P.2 1062 (WA 1991) (cited by State to show Supreme Court of Washington similarly affirmed discipline of physician who had a sexual relationship with a teenager, whom he had performed surgery on a year earlier).

⁶ The administrative law judge stated that she was unclear as to why the respondent believes that *Gibson's* conviction for armed robbery was "in a professional field related to the field in which the license or employment was sought." There is no such information in the decision.

would serve⁷; (2) he or she did not have numerous and/or past convictions⁸; and (3) he or she was not charged with a felony⁹; her focus on the specific facts of her offense and job is retrospective of the respondent's failed argument in the *County of Milwaukee* case. As the Court asserted in that case:

We reject an interpretation of this test which would require ... a detailed inquiry into the facts of the offense and the job. Assessing whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. What is important in this assessment is not the factual details related to such things as the hour of the day the offense was committed, the clothes worn during the crime, whether a knife or a gun was used, whether there was one victim or a dozen or whether the robber wanted money to buy drugs or to raise bail money for a friend. All of these could fit a broad interpretation of "circumstances." However, they are entirely irrelevant to the proper "circumstances" inquiry required under the statute. It is the circumstances which foster criminal activity that are important...."

(*Id.* at 823-24).

Moreover, "[w]hether an individual can perform a job up to the employer's standards is not the relevant question. (*Id.* at 827). It is the essential concomitants of the crime that count. *Id.* at 826.

Respondent Vong preyed on a 14-year-old boy, and had she gotten her way, would have had sexual intercourse with him. As it is, she forced herself upon him, embraced him, and manipulated his genitalia, despite his repeated pleas for her to stop. There's no telling what kind of effect her actions will have on him for the rest of his life. Whether her intoxication led her to do this or not, Respondent Vong's actions show a serious disregard for the wellbeing of an incredibly vulnerable person – a child. Her attempts to discourage him from telling his mother what she had done further shows that she knew that what she had done was wrong, and wanted to cover it up.¹⁰ Finally, her demonstrated inability to control her inappropriate sexual desires, and/or her intake of alcohol, evinces far-reaching problems that, without treatment, are likely to occur again. That Respondent Vong's crimes occurred on her own time, and not on work time, is of no consequence – indeed, the hour of day the offense is committed is immaterial. (*See supra*). Vong's crimes demonstrate tendencies to lose control of herself and disregard the wellbeing of vulnerable people. Not only do such tendencies have a high rate of recidivism, they are of heightened concern in a profession dedicated to caring for those in need, in which patients are often vulnerable, and must be able to trust their nurse with their physical, mental and sexual

⁷ See *Gibson v. Transportation Commission*, 106 Wis. 2d 22 (Respondent school bus driver applicant's conviction of/for armed robbery did not specifically involve children); see also *In the Matter of Disciplinary Proceedings Against Martin*, 112 Wis.2d 661 (convictions of/for adding to delinquency of minor did not specifically involve the population he served as a U.S. attorney).

⁸ Again, see *Gibson v. Transportation Commission*, 106 Wis.2d 22 (Respondent school bus driver applicant had only one conviction of armed robbery).

⁹ See *County of Milwaukee v. LIRC*, 139 Wis.2d 805 (respondent convicted of misdemeanors related to patient neglect). See also *In the Matter of Disciplinary Proceedings Against Martin*, 112 Wis.2d 661 (respondent's convictions for aiding to the delinquency of a minor per Wis. Stat. § 947.15(a)(a) (now Wis. Stat. § 948.40) were Class A misdemeanors).

¹⁰ The fact that the respondent had her victim's cell phone number additionally raises concerns that the evening of September 12, 2008 was not her first encounter with him.

wellbeing. The administrative law judge was convinced that the circumstances of Vong's crime relate to the profession of nursing.

Violation of Wis. Admin. Code § N 7.03(2) (Abuse of Alcohol or Other Drugs to the Extent it Impairs Practice)

While the parties do not dispute that Respondent Vong admits that she has a drinking problem, and was drunk when she attempted to have sex with a 14-year-old boy, (*see* Findings of Fact, ¶ 6), they are again at odds as to whether this conduct constitutes “the use of alcohol to an extent that such use impairs the licensee’s ability to safely or reliably practice,” in violation of Wis. Admin. Code § N 7.03(2).

The Division argued that Respondent Vong’s admission that alcohol caused her to lose control and sexually assault a child in her apartment, without realizing that such behavior was wrong until the child told her that he was going to tell his mother what she had done, is *prima facie* evidence that she cannot be trusted to practice safely or reliably in the future.¹¹ Respondent Vong, on the other hand, argued that because “there is no evidence of any other consequences or sanctions resulting from the struggle she was having with alcohol at the time[, n]or... any allegation that she had allowed her use of alcohol to compromise her duties as a nurse,” (Respondent’s Brief, ¶ 14), she cannot be found to “use alcohol to such an extent that it impairs her ability to safely or reliably practice.”

This was a more difficult determination for the ALJ, as there is only one incident of alcohol abuse in question. Nevertheless, the ALJ found Respondent Vong’s actions in becoming intoxicated, and having non-consensual sexual contact with, and attempting to have sexual intercourse with, a 14-year-old boy show that her admitted “drinking problem” is seriously out of control. Accepting that what she told the police was true, Respondent Vong’s drinking caused her to blur the line between right and wrong on at least one occasion, with serious consequences to a child. Although her actions were committed on her own time, and not on the job, without treatment, there are no assurances that alcohol will not cause her to blur the line between her private and public behavior in the future, putting her patients and the public at great risk. As this is the group of people for whom the regulatory scheme was created to protect (*see Gilbert v. State*

¹¹ In support of this premise, The Division references *Henley v. Alabama Board of Nursing*, 607 So.2d 256 (AL 1992), in which the Alabama Court of Civil Appeals upheld a decision of Alabama Board of Nursing revoking a respondent nurse’s license under a similar code provision, in light of her numerous arrests and one conviction for disorderly conduct and public intoxication. *See Id.* at 257 (“... evidence of alcohol-related arrests and a convictions... clearly renders Henley’s competence to practice nursing questionable.”) Though the respondent is correct to note that, in making its decision, the court also considered: (1) the several months Respondent Henley was committed to the Department of Mental Health and Mental Retardation for treatment; and (2) her inability to produce supportive documentation from her psychiatrist that she could return to work, despite being requested to do so, this distinction is of little significance. Of more importance is the court’s finding that the respondent’s talent in the nursing field was not related to her competence, (or lack thereof due to alcohol addiction), to assume all the responsibilities of the practice of nursing. (*Id.* at 258).

Medical Examining Board, 119 Wis.2d 168, 188, 349 N.W.2d 68, 77), the ALJ concluded that Respondent Vong's abuse of alcohol unquestionably impairs her ability to safely and reliably practice nursing, in violation of Wis. Admin. Code § N 7.03(2).

Disciplinary Recommendations

As discipline for her above violations, the Division recommends an indefinite suspension on Respondent Vong's license of not less than five years, with the opportunity to stay said suspension after two years time, if certain conditions with respect to alcohol consumption and patient contact are met.¹² (Division's Brief-in-Chief, p. 11). In support of its recommendation, the Division makes reference to two previous Board of Nursing Orders in which the respondent nurses agreed to have their licenses revoked for having non-consensual sexual contact with patients (*In the Matter of Disciplinary Proceedings Against John E. Weyker* (2006), Division of Enforcement Case # 06 NUR 222; *In the Matter of Disciplinary Proceedings Against Chaffee* (1997), 97 NUR 01), one previous Board of Nursing Order in which the Board accepted the surrender of a nurse's license for consensual sexual contact with two former patients, with the understanding that he could reapply for licensure in the future if stringent requirements were met (*In the Matter of Disciplinary Proceedings Against Taylor Love* (2002), LS0201043NUR), and one Board of Nursing decision in which the Board accepted a stipulation suspending a nurse's license for a minimum of two years, and then subjecting her to similar conditions as recommended in the instant case, for her consensual sexual contact, including intercourse, with a 15-16 year old child. The Division argues that Respondent Vong's case falls somewhere between the first three cases and the last.

Respondent Vong counters that a suspension of her nursing license is unwarranted, since there is an unsubstantial relationship between her one incident of unlawful behavior and the practice of nursing, and without citing any authority or providing any reasoning, asserts that if

¹² Specifically, the Division recommends that the suspension could be stayed after two years if:

(1) Respondent Vong has undergone an assessment by a therapist with experience with sex offenders, pre-approved by the Board, and the therapist convinces the Board that she is safe to practice nursing;

(2) Respondent Vong maintains sobriety. Respondent must have undergone treatment for alcoholism and agrees to ongoing counseling and participation in AA/NA or an equivalent group.

(3) Respondent Vong submits to random urine screens, including ETG screens. A positive screen, including a positive ETG screen, would be presumed and ground for terminating the stay and reinstating the suspension. Respondent Vong would have to prove, by a preponderance of the evidence, that a positive test does not prove that she consumed alcohol or other drugs.

(4) During the pendency of the suspension, Respondent Vong's license would be limited such that she can only work under direct supervision, and cannot work in any home, health, agency or pool setting. She would be required to provide quarterly work reports from her employers.

(5) Respondent Vong's license should be permanently limited to prevent her practicing nursing with children under 18 years old, or in a setting in which she would have unsupervised contact with children under 18 years old.

any suspension is ordered, it should be far shorter than five years, and the only conditions imposed should be with respect to her use of alcohol. (Respondent's Brief, p. 5).

The three purposes of discipline are 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 Vong's conduct in becoming intoxicated, sexually assaulting a 14-year-old boy, and then pleading him not to tell his mother what she had done, shows that she is not in control of her impulses, and is a danger to the public. Her admission that she has a drinking problem, and was inebriated on the evening in question only strengthens this concern. When coupled with her proclivity for teenage children, it further demonstrates that she is in serious need of rehabilitation.

Suspending Respondent Vong's license until she can prove that she is rehabilitated, and no longer a threat to the public, is thus not only logical, but necessary in light of the above purposes of discipline. Similarly, imposing conditions and limitations on Respondent Vong's license, (once retained), aimed at preventing reoccurrences of alcohol consumption and sexual contact with minors is sensible given the high incidences of recidivism attached to both behaviors. Finally, despite the Division's failure to provide any purpose-related reasoning for the timeline proposed for Vong's suspension, the administrative law judge agrees that in light of (1) the Nursing Board's previous orders of discipline in cases of sexual misconduct (*see supra*), (2) the lack of any legal argument from the respondent on this issue, and (3) the interest the Board has in both allowing sufficient time for Respondent Vong to rehabilitate, and in discouraging other nurses from engaging in similar conduct, an indefinite suspension of not less than five years, with the opportunity to stay said suspension after two years time¹³, is appropriate and will accept the Division's proposed order for discipline.

Assessment of Costs

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 are 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

¹³ Respondent Vong may, however, petition the Board for an earlier stay of suspension one year from the date of the effect of this Order. *See* ¶ D.6 of Order, below.

profession on the vast majority of the licensees who have not engaged in misconduct;

- 7) Any other relevant circumstances.

See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz (LS 0802183 CHI).

Respondent Vong cooperated in these disciplinary proceedings. She agreed to stipulate all facts and challenged only (1) whether her conduct was “substantially related” to the practice of nursing, and (2) whether her admitted drinking problem has “impaired her ability to safely and reliably practice,” of which neither inquiry was obvious. Balancing these factors against the seriousness of her misconduct by the Division, the administrative law judge recommended that the respondent should be required to pay one-half (1/2) of the costs involved in investigating and prosecuting this matter.

EXPLANATION OF VARIANCE

Under the recommended disciplinary terms respondent’s license would be suspended for an indefinite period with the opportunity for a stay of suspension as early as one year from the effective date of the order, as noted by the ALJ in her proposed decision. The recommended discipline also provides that respondent could apply for a stay of suspension after two years, per paragraph B.1. Neither scenario is acceptable to the Board because this short duration does not fulfill the purposes for professional discipline.

Professional discipline must be commensurate with the seriousness of the conduct and risk of future harm to the public. Professional discipline must be sufficient to ensure that others will be deterred from engaging in such conduct. The discipline must also provide adequate time for rehabilitation, if possible, to occur. Finally, the proposed terms of discipline may not send the wrong message to other nurses by diminishing the gravity of the conduct and its consequences. *State v. Aldrich*, 71 Wis. 2d 206 (1976). The Board’s action in altering the recommendation for discipline is based upon the seriousness of the misconduct, the risk of potential harm to the public, and the importance of deterrence other nurses from engaging in similar conduct.

Respondent was convicted of three separate crimes which evidence her untrustworthiness, dangerousness, disrespect for others and lack of responsibility. She was convicted of Fourth Degree Sexual Assault, which is defined as having sexual contact with a person without that person’s consent. Sexual assault is a disturbing crime that indicates a wanton disregard for the rights, space and physical safety of others. In this case, the victim was a young teenage boy, not an adult of consenting age, a factor which raises the level of concern when it involves a licensed health care professional. Although it appears that respondent was not charged with or convicted of other related crimes, this conduct could be considered to be a form of child abuse.

Respondent was also convicted of Intimidating/Dissuading Reporting and Disorderly Conduct. These criminal acts show a profound disregard for the safety and welfare of others as well as antisocial tendencies. The fact that respondent was intoxicated at the time of the assault does not excuse her behavior. Individuals may choose to drink and become intoxicated, but no matter how much they drink, a responsible trustworthy person does not try to fulfill their own urges at the expense of a child's physical, mental and emotional health and welfare. Many nurses have alcohol and drug impairments but they do not abuse others while under the influence.

The factual findings recited in the proposed decision show that respondent knew she acted improperly because she attempted to stop the victim from reporting her conduct to his mother. This subsequent conduct by respondent heightens the warning signal to the Board. It tends to show that respondent has the propensity to cover up her wrong doing at the expense of another's person's physical, mental and emotional safety and welfare. This type of self-serving action suggests a character trait which is inconsistent with ethics of a nurse who is charged with the duty to care for patients and who is expected to report wrongdoing to protect the welfare of patients.

In addition, the Board finds the following discussion in the ALJ's proposed decision supportive of this variance:

Respondent Vong's actions in becoming intoxicated, and having non-consensual sexual contact with, and attempting to have sexual intercourse with, a 14-year-old boy show that her admitted "drinking problem" is seriously out of control. Accepting that what she told the police was true, Respondent Vong's drinking caused her to blur the line between right and wrong on at least one occasion, with serious consequences to a child. Although her actions were committed on her own time, and not on the job, without treatment, there are no assurances that alcohol will not cause her to blur the line between her private and public behavior in the future, putting her patients and the public at great risk. As this is the group of people for whom the regulatory scheme was created to protect (*see Gilbert v. State Medical Examining Board*, 119 Wis.2d 168, 188, 349 N.W.2d 68, 77), the ALJ concluded that respondent Vong's abuse of alcohol unquestionably impairs her ability to safely and reliably practice nursing, in violation of Wis. Admin. Code § N 7.03(2). (emphasis added)

The profession of nursing carries enormous responsibilities. Nurses are required to care for the health, safety and welfare of those who are most vulnerable due to age, infirmity or limited capacity. Patients must be able to trust nurses in all circumstances and to expect that nurses will not cause them harm or take advantage of their vulnerability. In view of their special trust, the public has a right to hold nurses to high ethical standards and to demand those who regulate the nursing profession seek to uphold those standards.

For more than a decade, nurses were voted the most trusted profession in American in the annual Gallup's Poll survey that ranks professions for their honesty and ethical standards. Public confidence in the nursing profession would be seriously eroded if conduct such as the respondent's which is so antithetical to the core values of a nurse did not result in the revocation of licensure. Respondent's convictions, standing alone or with an examination of the underlying facts, indicates a lack of trustworthiness, respect and concern for the welfare of others that render her incapable and undeserving of the privilege to hold a nursing license. Accordingly, the Board

has determined that revocation of respondent's license to practice as a registered nurse is appropriate.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license of Chantha Vong, R.N. to practice as a nurse in the state of Wisconsin (lic.# 30-149844) and her privilege to practice nursing in Wisconsin under the authority of another's state's license pursuant to the Nurse Licensure Compact is **REVOKED**.

IT IS FURTHER ORDERED that:

2. The respondent should pay one-half (1/2) of the costs involved in investigating and prosecuting this matter within ninety (90) days of the effective date of this order.

IT IS FURTHER ORDERED that this order is effective on the date signed below.

Dated at Madison, Wisconsin on this 2nd day of June, 2011.

By: _____

A Member of the Board of Nursing

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