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Before The
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against JAMES P. WILLIAMS, R.N.,
Respondent

FINAL DECISION AND ORDER

Order No. _____
ORDER 0000967

Division of Enforcement Case No. 09 NUR 365

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 21st day of July, 2011.

L. M. Williams, R.N.
Member
Board of Nursing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **JAMES P. WILLIAMS, R.N.**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-11-0014

Division of Enforcement Case No. 09 NUR 365

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

James P. Williams
7451 East Medina Avenue
Mesa, AZ 85209

James P. Williams
ASPC-Lewis
Stiner Unit
James P. Williams ADS # 259268
P.O. Box 3100
Buckeye, AZ 85326

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

Department of Regulation and Licensing, Division of Enforcement, by

Attorney Sandra Nowack
Department of Regulation
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, James P. Williams. The Division filed said Complaint with the Division of Hearings and

Appeals on January 31, 2011. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing to Respondent Williams via both certified and regular mail at his address of record with the Department of Regulation and Licensing; 7451 E. Medina Ave., Mesa AZ 85209. It further sent a copy of said documents via certified and regular mail to the address it believed to be Respondent Williams' current address; ASPC-Lewis, Stiner Unit, James Williams ADC # 259268, P.O. Box 3100, Buckeye, AZ 85326. The Notice of Hearing stated that Respondent Williams was required to file a written Answer to the Complaint within 20 days, failing which "[he would] be found to be in default and a default judgment [could] be entered against [him] on the basis of the Complaint and other evidence and the Wisconsin Board of Nursing [could] take disciplinary action against [him] and impose the costs of the investigation, prosecution and decision of this matter upon [him] without further notice or hearing."

The above documents were received by Respondent Williams at the ASPC-Lewis, Stiner Unit address on or about February 7, 2011.¹ To date, no Answer has been filed.

On or about February 22, 2011, 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 Williams and Attorney Sandra Nowack of the Division of Enforcement for March 9, 2011. This Notice instructed Respondent Williams to contact the ALJ to provide the telephone number for which he could be reached for the March 9, 2011, telephone conference, and was sent to the address on file for Respondent Williams, as noted in the Division's Complaint: 7451 East Medina Avenue, Mesa, AZ, 85209. It was not sent to Respondent Williams' ASPC-Lewis, Stiner Unit address.

Not surprisingly, Respondent Williams did not contact the ALJ with a telephone number that he could be reached at for the March 9, 2011, telephone conference. The telephone conference that was conducted on that date was thus without the respondent's participation, and Attorney Nowack made a motion for default pursuant to Wis. Admin. Code § RL 2.14. Upon Respondent's failure to file an Answer and failure to appear at the March 9, 2011 telephone conference, the ALJ granted Attorney Nowack's default motion and issued a Notice of Default instructing Respondent Williams that he 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 Nowack to provide the ALJ with the Division's written recommendations for discipline and the assessment of costs in this matter by March 18, 2011. It was mailed to Respondent Williams at the address on record for him, per the Division's Complaint: 7451 East Medina Avenue, Mesa, AZ, 85209. Again, it was not sent to Respondent Williams at his ASPC-Lewis, Stiner Unit address. Attorney Nowack filed the Division's Motion for Discipline and Costs on March 15, 2011. She, however, sent this motion to Respondent Williams at both of his above addresses.

Respondent Williams failed to respond to either the Notice of Default issued against him, or the written recommendations provided by Attorney Nowack on March 15, 2011.

Because the ALJ recognized that the Notice of Telephone Prehearing Conference and Notice of Default were not sent to Respondent Williams at his ASPC-Lewis, Stiner Unit address,

¹ Respondent Williams signed a certified mail receipt for the documents on February 7, 2011.

she resent both documents to respondent at that address on or about May 16, 2011. Respondent Williams was advised that if he did not respond to these documents and/or request a new prehearing date by June 3, 2011, the finding of default against him would stand, and the ALJ would issue a decision based on the Complaint and the Division's March 15, 2011 Motion for Discipline and Costs.

Respondent Williams did not respond to either of the above documents, or request a new prehearing date by June 3, 2011. This decision follows.

FINDINGS OF FACT

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

1. James P. Williams, R.N., date of birth October 9, 1966, was licensed by the Wisconsin Board of Nursing as a registered nurse (RN) in the state of Wisconsin pursuant to license number 149920, which was first granted February 10, 2005. On May 7, 2009, the Board issued an Interim Order of Suspension in case number 09 NUR 014, which suspended Respondent's license effective that date, pending completion of an investigation. Respondent's license remains suspended.
2. Respondent's address of record with the Department of Regulation and Licensing is 7451 E. Medina Avenue, Mesa, AZ 85209.
3. Pursuant to the Nurse Licensure Compact, Respondent, who is not licensed in Arizona, practiced professional nursing in that state using his Wisconsin license.
4. Wisconsin and Arizona are party states of the Nurse Licensure Compact which provides for multistate licensure privileges and allows a nurse with a license from a "home state" to engage in the practice of nursing in all other party states, which are called "remote states."
5. On August 13, 2006, Respondent, while working as an RN at St. Luke's Medical Center in Phoenix, Arizona, sexually assaulted Patient CC. Because Patient CC refused to cooperate with the Arizona Board's investigation, the Arizona Board closed the case without action against Respondent's multi-state privilege and referred the complaint to Respondent's home state of Wisconsin to be re-opened upon receipt of additional information warranting investigation in Arizona.
6. On December 25, 2008, Respondent was employed by Quality Staffing Services and assigned to work at Paradise Valley Hospital in Paradise Valley, Arizona. During the 7:00 a.m. to 7:00 p.m. shift, Respondent cared for patient SF, who had undergone laparoscopic abdominal surgery on December 24, 2008.

7. Patient SF alleged that, on December 25, 2008, Respondent attempted to kiss her and to place his penis into her mouth after he assisted her onto the toilet. When Patient SF pushed him away, he ejaculated into the sink in front of her. Patient SF further alleged that Respondent later called her on her cell phone and asked if she had told anyone what had happened.²

8. On December 30, 2008, when he was interviewed by hospital risk management staff, Respondent stated that he called Patient SF only because he was interested in talking to her about her business. Respondent denied any sexual contact with Patient SF.

9. According to a Phoenix Police Department report:

- a) Police confirmed that Respondent made calls to Patient SF's cell phone on December 25 at 11:51 a.m. and on December 28 at 6:10 p.m. and 7:49 p.m.
- b) Respondent provided conflicting information on January 7, 2009, when he told a detective that he called Patient SF because he wanted to talk to her about a self-help book business in which he was involved.
- c) Respondent admitted on January 7 during a taped telephone conversation with Patient SF that he had placed his penis in her mouth.
- d) Respondent was untruthful on January 7 during a telephone conversation with a detective when he stated he was unavailable for interview that day because he was in Texas. The telephone number on the detective's caller ID was from Mountain Vista Medical Center in Mesa, Arizona.

10. On January 8, 2009, Respondent was arrested while working at Mountain Vista Medical Center. Respondent denied to the arresting officer that he kissed or placed his penis in the mouth of either Patient CC in 2006, or Patient SF in 2008.

11. On January 16, 2009, Respondent was indicted in Maricopa County Arizona Superior Court case number CR2009-102873 on two counts of sexual assault, a class 2 felony, against Patient CC and two counts of sexual assault, a class 2 felony, against Patient SF.

12. During an interview with Arizona [Nursing] Board staff on February 24, 2009, Respondent admitted the following:

- a) He bantered and flirted with Patient SF on December 25, 2008, while caring for her at Paradise Valley Hospital;
- b) He called Patient SF after his shift ended, returned to the hospital to visit her, and kissed her;
- c) He met Patient SF in the parking lot of a Wal-Mart on December 28, 2009, where Patient SF performed fellatio on him;

² It is unclear how Respondent obtained Patient SF's cell phone number).

- d) Arizona has been his primary state of residence since sometime in 2008, but he continued to work under his Wisconsin license and did not apply for Arizona licensure as required by the Nurse Licensure Compact.

13. On June 3, 2009, as a result of his conduct, the Arizona Board issued an Order revoking Respondent's privilege under the Nurse Licensure Compact to practice Nursing in the State of Arizona.

14. While in jail, (assumedly, for his above conduct), Respondent conspired with another inmate to fire bomb on of his victim's houses.

15. As set out in the Procedural History above, a Complaint and Notice of Hearing were sent to Respondent Williams at his most recent address on file with the Department of Regulation and Licensing, (7451 East Medina Avenue, Mesa, AZ, 85209), on or about January 31, 2011. A copy of said documents were further sent to, (and accepted by), Respondent at the address believed to be his current address: ASPC-Lewis, Stiner Unit, James P. Williams ADS #259268, P.O. Box 3100, Buckeye, AZ 85326.

16. On or about February 22, 2011, the undersigned ALJ sent a Notice of Telephone Prehearing Conference for March 9, 2011, to Respondent Williams at the address on file for him with the Department of Regulation and Licensing, as noted in the Division's Complaint: 7451 East Medina Avenue, Mesa, AZ, 85209.

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

18. On or about March 9, 2011, the ALJ sent a Notice of Default to Respondent Williams at the address on file for him, as noted above.

19. Upon recognizing that the Notice of Telephone Prehearing Conference and Notice of Default were not sent to Respondent at his ASPC-Lewis, Stiner Unit address, the ALJ resent both documents to Respondent at that address, along with correspondence that advised Respondent that should he fail to respond to these documents or request a new prehearing date by June 3, 2011, the finding of default against him would stand.

20. Respondent has not responded to either of the above notices or requested a new prehearing date.

21. Respondent has further failed to respond to the Complaint against him.

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. Wis. Stat. § 440.03(1) provides that the department [of Regulation and Licensing] “may promulgate rules defining uniform procedures to be used by the department... and all examining boards and affiliated credentialing boards attached to the department or an examining board, for... conducting [disciplinary] hearings. These rules are codified in Wis. Admin. Code ch. RL.”
3. 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 Williams at his last known address, he was duly served with these papers pursuant to Wis. Admin. Code § RL 2.08.
4. As the licensee, it was Respondent Williams’ responsibility to keep his address on record with the Department of Regulation and Licensing current. Wis. Stat. § 440.11(1).
5. Respondent Williams 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.
6. Allegations in a complaint are deemed admitted when not denied in an answer. Wis. Admin. Code § RL 2.09. Respondent Williams has admitted to the allegations of the Complaint by default by not filing an Answer.
7. Pursuant to Wis. Stat. § 441.50(5)(e), **Nurse Licensure Compact, Article V – Adverse Actions**, “[A] home state may take adverse action based on the factual findings of [a] remote state, so long as each state follows its own procedures for imposing such adverse action.”
8. 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.”
9. 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.”

10. Wis. Admin. Code § N 704(7) further defines “misconduct or unprofessional conduct” to include: “Having disciplinary action through final board adjudication taken against one’s license in another jurisdiction.”

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

12. Wis. Admin. Code § N 704(1) further defines “misconduct or unprofessional conduct” to include: “Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing.”

13. Respondent Williams, by having disciplinary action taken against his Multi-State Compact Privilege to practice professional nursing in the state of Arizona by the Arizona State Board of Nursing, has committed misconduct or unprofessional conduct as defined by Wis. Admin. Code § N 7.04(7), and is thus subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

14. Respondent Williams, by engaging in assaultive and inappropriate sexual contact, exposure, gratification, and other sexual behavior with and in the presence of patients, as set out above, has committed misconduct or unprofessional conduct as defined by Wis. Admin. Code § N 7.04(11), and is thus subject to discipline pursuant to Wis. Stat. § 441.07(1)(d).

15. Respondent Williams, by engaging in the conduct set out above, has violated laws substantially related to the practice of nursing under his license, and has thus committed misconduct and unprofessional conduct as defined by Wis. Admin. Code § N 7.04(1), which subjects him to discipline pursuant to Wis. Stat. § 441.07(1)(d).

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against him, Respondent Williams has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that Respondent Williams: (1) sexually assaulted at least two patients in Arizona; (2) assaulted the second of these two patients after having had a disciplinary action brought against him by the Arizona State Board of Nursing for his sexual assault of the first patient; (3) repeatedly denied both incidents and lied about his relationship with Patient SF to the authorities; (4) had his privilege under the Nurse Licensure Compact to practice nursing in the state of Arizona revoked by the Arizona State Board of Nursing for the above; and (5) while in prison, conspired with another inmate to fire bomb one of his victim’s houses. Such conduct clearly violates Wis. Admin. Code §§ N. 7.04(1), N 7.04(7), and N. 7.04(11) (*see* Conclusions of Law, ¶¶ 10-12). Respondent Williams is thus subject to discipline pursuant to Wis. Stat. §

441.50(5)(e) and 441.07(1)(d). The only question that remains is what kind of discipline is appropriate.

Appropriate Discipline

The Division requests that Respondent Williams' license to practice nursing be revoked. In support of this recommendation, it argues that:

Revocation of Respondent's license to practice nursing is necessary due to the severity of Respondent's practice violations. Failure to revoke Respondent's license to practice nursing would place the healthcare consumers at intolerable risk of harm.... The evidence shows the respondent continues to present a danger to the health, safety and welfare of patients and the public, because:

- a) Respondent's acts of misconduct in the course of nursing practice were premeditated, repeated, and deliberate sexual assaults of at least two different patients who Respondent [had reason to know were] particularly vulnerable due to their medical condition;
- b) Respondent's repetition of... sexually assaultive conduct after he was initially confronted by law enforcement authorities is evidence of the deep and enduring nature of his motivation to continue to engage in deviant sexual conduct in the practice of nursing;
- c) Respondent engaged in repeated dishonesty and obstruction with law enforcement authorities and with the Board;
- d) Respondent has not demonstrated any evidence of concern for his victims, nor has he expressed remorse. To the contrary, Respondent's actions in repeating the assaults establish that he did not consider the consequences of his [actions] and of his deviant conduct on his victims. Such lack of empathy is inconsistent with the practice of nursing;
- e) While in jail, Respondent conspired with another inmate to fire bomb one of the victim's houses.... Such outright antisocial and dangerous conduct against a vulnerable victim is contrary to the values of the nursing profession...;
- f) ...Respondent, by failing to reliably participate in these proceedings, has demonstrated an inability to participate meaningfully in matters of critical importance to [his] career.... Given the Respondent's failure to participate in telephone prehearing conferences ordered by the ALJ, the Wisconsin Board of Nursing cannot make any assurances of Respondent's fitness to practice....

(Complainant's Motion for Discipline and Costs, filed March 15, 2011).³

The undersigned ALJ agrees with the Division's logic, and finds that Williams' conduct warrants the revocation of his license.

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 conduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Respondent Williams' conduct in (1) sexually assaulting at least two patients; (2) assaulting the second of these patients after having had disciplinary proceedings brought against him for sexually assaulting the first; and (3) repeatedly lying to the police about his involvement with both patients (*see supra*), demonstrates that he has a "deep and enduring... motivation to engage in deviant sexual conduct in the practice of nursing," (*see supra*), that he has little concern for the health and/or safety of the public he serves, and that he is in serious need of rehabilitation. His attempt to fire bomb one of his victim's houses from jail, and his failure to participate in these proceedings despite being given numerous opportunities only strengthens these concerns, and evinces that Respondent is far from rehabilitated. Finally, Respondent's abuse of position to effectuate his sexual desires is in grave conflict with the practice of nursing, and must be deterred. The relief requested by the Division is thus not only appropriate, but necessary to protect the public from future instances of misconduct by the respondent.

Costs

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

In *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), the Chiropractic Examining Board found that:

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

³ The Division further argues that revocation is necessary due to Respondent Williams' demonstrated disregard of the Board in these proceedings, and the disciplinary objectives of general and specific deterrence. (*Id.*)

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 of the same reasons as cited in the *Buenzli-Fritz* decision, Respondent Williams should be assessed the full amount of recoverable costs. His alleged conduct is of a very serious nature, he did not participate in the proceedings against him, 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 Williams on Respondent Williams, and not fellow members of the nursing profession who have not engaged in such conduct.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of the Respondent James P. Williams to practice nursing in the State of Wisconsin be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent Williams 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:

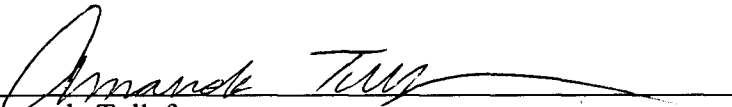
**Department Monitor
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent James P. Williams.

Dated at Madison, Wisconsin on June 9, 2011.

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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