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Before The
State Of Wisconsin

BOARD OF NURSING

In the Matter of the Disciplinary Proceedings Against
NANCY E. HARRIS, R.N., Respondent,

FINAL DECISION AND ORDER WITH
VARIANCE

(Lic.#120225-30)

DHA Case No. SPS-11-0003

(aka NANCY E. KEANE, RN)

ORDER 0001341

Division of Enforcement Case No. 10 NUR 16

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

Nancy E. Keane¹
1360 Racine Ave. S.
Lakeland, MN 55043

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

Department of Safety and Professional Services, Division of Enforcement, by

Attorney Arthur Thexton
Department of Safety and Professional Services
Division of Enforcement
P. O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

These proceedings were initiated on or about January 7, 2011, when the Department of Safety and Professional Services², Division of Enforcement (the "Division") filed a formal Complaint against Respondent Nancy E. Keane, alleging that in an Order dated February 9, 2009, the Minnesota Board of Nursing suspended Respondent's license to practice nursing in that state due to her failure to comply with an earlier (11/7/2008) Minnesota Board of Nursing Order directing her to submit to mental, physical, and

¹ Formerly known as Nancy Harris and Nancy Keane-Harris.

² Then known as the Department of Regulation and Licensing.

chemical dependency evaluations.³ (See State's Exhibit 1, certified copy of Order of Suspension dated February 19, 2009). The Division argued that by being disciplined by the Minnesota Board of Nursing, Respondent Keane's license was subject to disciplinary action in Wisconsin pursuant to Wis. Admin. Code § N 7.04(7).⁴

The administrative law judge (ALJ) initially scheduled a prehearing conference in this case for February 17, 2011. Due to illness/injury on behalf of both Respondent Keane and counsel for the Division (Arthur Thexton) however, the prehearing conference in this matter was not held until May 5, 2011. At that time, Respondent represented that: (1) the disciplinary proceedings against her license in Minnesota were still ongoing⁵; (2) the attorney that had initially represented her in said disciplinary proceedings had been found incompetent, and still had her paperwork; (3) she was attempting to find a new attorney to represent her; and (4) she had completed all evaluations required by the Minnesota Board of Nursing's earlier (11/7/2008) Order, had the documentation to prove it, and would complete the evaluations again, if required. She urged that given the above, this case was not ripe for action in Wisconsin. Upon this information, the ALJ encouraged the parties to talk with one another, and set a status conference for June 9, 2011. The date of this hearing was later changed to June 15, 2011.

At the June 15, 2011, status conference, Respondent represented that she was in the process of retaining Minnesota Attorney "Ryan Kaess" to represent her. The status conference was thus continued until July 20, 2011. At the July 20, 2011, status conference, Respondent represented that she had not, in fact, retained "Attorney Kaess," but again advised that the Minnesota Board was "reconsidering" her case and the allegations against her. At the Division's insistence that this case had been pending long enough, the ALJ scheduled a contested case hearing for October 7, 2011. Respondent, however, was encouraged to contact the Division with any developments with respect to her Minnesota license. On or about October 4, 2011, the ALJ received the following communication from Respondent⁶:

Dear Administrative Law Judge Amanda Tollefsen,

As you know I have not resolved this matter with the Minnesota board [sic] of Nursing, however I have every intention of doing so. Presently I completed all that was requested of me by the Minnesota board [sic] of Nursing. I had a final conference which is where things were left off. At that time my Attorney [sic] came to the conference unprepared and unfortunately incompetent.

³ The certified copy of this Order, identified by the State at Exhibit 2 and dated November 7, 2008, has not yet been made public by the Minnesota Board of Nursing. See *id.*, Tr. at pp. 66. As such Exhibit 2, and all related documents, will not be attached to this Final Decision and Order. See Findings of Fact ¶ 5).

⁴ Wis. Admin. Code § N 7.04 provides: "As used in s. 441.07 (1) (d), Stats., "misconduct or unprofessional conduct" means 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. "Misconduct or unprofessional conduct" includes, but is not limited to, the following: ... (7) Having disciplinary action through final board adjudication taken against one's license in another jurisdiction....

⁵ It is unclear to the administrative law judge whether Respondent was further arguing that, because the disciplinary proceedings were still ongoing, the Minnesota Board's disciplinary action did not represent final board adjudication. As such, this argument will be considered.

⁶ The Division, by Attorney Arthur Thexton, e-mailed a copy of the following communication to the undersigned ALJ on October 3, 2011.

My attorney was paid in full to complete this matter or retain an attorney for me. He did not complete this matter nor retain a new attorney. I have had multiple difficulties in my ability to locate my former attorney to obtain my files, to speak with him regarding my case, or have an alternate attorney to represent me. Then on a personal note I broke my neck which was a long recovery. Minnesota board [sic] of nursing has recognized that by no fault of my own I have not been able to finalize this matter and has allowed me the time I need to regroup and prepare for a final conference with them.

Due to my inability to finalize my matter with [sic] Minnesota Board of Nursing in the timely manner that I had intended it is of my opinion that the conference with the board [sic] of Wisconsin need be postponed until the decision of the Minnesota board [sic] of Nursing. The basis for this is any other state that I would carry a license in would be subject to my primary state of licensing's standing and any discipline action. Therefore if Minnesota would reinstate my license without prejudice it would have barring [sic] on the outcome in any other state.

I would respectfully meet with you once I know the outcome from Minnesota, if need be. To have a conference with the board [sic] of Wisconsin regarding a matter before the board [sic] of Minnesota is redundant and unnecessary for that fact I am suggesting that the board [sic] of Wisconsin postpone the hearing for October 7th, 2011 until I have resolution in Minnesota. I have been very candid with you as with Minnesota. I want to thank you for your patience and understanding at this time as Minnesota has been.

Sincerely,

Nancy E. Keane-Harris

In response to the above correspondence, the Division (through Attorney Thexton) sent an inquiry to the Minnesota Board of Nursing to determine whether Respondent had recently contacted that state about reinstating her license. He received the following response from Rene Cronquist, the Director of Practice and Policy for the Minnesota Board of Nursing:

Dear Mr. Thexton,

The last communication the Board received from Ms. Keane was on September 8, 2010 when she attended a conference with a Board Review Panel. The Board Review Panel informed her of the requirements she would need to meet before the Board would consider a request for reinstatement of her license. There have been no further communications from Ms. Keane or submissions on her behalf.

The Division thus stated its opposition to any postponement of this hearing. Considering the above information, the ALJ determined that it would be helpful to have Ms. Cronquist testify at the October 7, 2011, hearing, and asked Attorney Thexton to arrange her attendance. She informed both parties that she would determine whether she would proceed with the hearing after she heard from Ms. Cronquist. In an e-mail dated October 6, 2011, Respondent indicated that she agreed that it would be

helpful to speak with the Minnesota Board, as well as Assistant Attorney General Ben Garbe⁷, who she had previously identified as the attorney who had represented the state's (Minnesota's) interest in the case against her license in Minnesota. However, she revealed that she had a conflict that prevented her from being able to come to Wisconsin for her October 7, 2011 hearing, and asked if she could be conferenced in by telephone. Though the ALJ was initially concerned about not being able to witness Respondent's testimony in person, and thus determined that the hearing on October 7th would be limited to Ms. Cronquist's testimony (with the remainder of the hearing being rescheduled, if necessary, to a mutually agreeable time shortly thereafter), upon objection from Mr. Thexton⁸ indicating that all the Division was seeking was reciprocal discipline, she reconsidered, and informed both parties that the contested case hearing would go on as scheduled, by telephone. The contested case hearing was thus heard, with Rene Cronquist and Respondent Keane appearing by telephone, on October 7, 2011. At the conclusion of this hearing, the question remained whether the time had come to take disciplinary action against Respondent Keane in Wisconsin.

On the evidence presented, the ALJ issued her *Proposed Decision and Order* dated November 11, 2011. Neither party filed objections to the ALJ's findings, conclusion and disciplinary recommendations or requested oral argument before the Board. On January 26, 2012, the Board reviewed the ALJ's *Proposed Decision and Order*; decided to make certain variances, and now adopts the following as the *Final Decision and Order with Variance* in this matter. The Board's revisions are described in the section titled as the Explanation of Variance.

FINDINGS OF FACT

1. Nancy Eileen Harris, now Nancy Keane (D.O.B. 6/18/1957), Respondent, is a professional nurse licensed in the state of Wisconsin pursuant to license #120225, first granted 7/11/95. Respondent Keane's Wisconsin nursing license is current until 2/29/2012. (*See State's Exhibit 2*).

2. Respondent Keane is also licensed as a professional nurse in Minnesota under the name Nancy Eileen Keane. Minnesota is Respondent Keane's primary licensing state. (Transcript of October 7, 2011 Hearing, p. 5, l. 1). Her address of record is 1360 Racine Avenue South, Lakeland, MN 55403.

3. Respondent Keane does not currently practice nursing in Wisconsin, and has no plans to practice in Wisconsin in the future. (Tr. p. 1, ll. 22-25). She has not practiced in Wisconsin for approximately six (6) years. (*Id.*)

⁷ Neither Rene Cronquist, nor Ben Garbe were included on the Respondent Keane's witness list, ordered by the undersigned administrative law judge to have been exchanged with the Division by August 22, 2011. In fact, Respondent failed to file a witness list.

⁸ Mr. Thexton was not initially copied on Respondent's above-referenced October 6, 2011, e-mail.

4. On 2/9/2009, the Minnesota Board of Nursing suspended Respondent Keane's license to practice nursing in that state for failing to comply with an earlier Board Order (11/7/2008) that she submit to mental, physical and chemical dependency evaluations in a timely manner.⁹

5. The Minnesota Board of Nursing's 11/7/2008 Order is not yet public; as such, the decision and all related documents shall not be attached as an exhibit to this Final Decision and Order because disciplinary orders are public records in Wisconsin.

6. Of significance to the current proceedings, the Minnesota Board of Nursing's Order dated 11/7/2008 provides that: "As set forth in Minnesota Statutes section 148.261, the failure of Licensee [Keane] to submit to the above described examinations shall constitute an admission of the allegations described herein [not public] unless the failure was due to circumstances beyond her control, and the Board may enter a default and final order against Licensee's nursing license without the taking of testimony or the presentation of evidence."

7. Wis. Stat. § 441.07(1)(d) and Wis. Admin. Code § N 7.04(7) provides that the Wisconsin Board of Nursing has the authority to revoke, limit, suspend or deny renewal of a professional nurse's license for having disciplinary action through final board adjudication taken against one's license in another jurisdiction.

8. Pursuant to the Minnesota Board of Nursing's Order of 2/9/2011 suspending Respondent Keane's license, the allegations against respondent were deemed admitted and the Board stated it was entitled to enter a default judgment, and ordered Respondent Keane's license suspended "... until such time as Respondent complies with the Order for Mental, Physical, and Chemical Dependency Evaluation, dated November 7, 2008, and demonstrates the ability to resume the competent practice of professional nursing with reasonable skill and safety to patients." (Emphasis added).

9. Respondent Keane eventually completed mental, physical and chemical dependency evaluations with evaluators "designated by the [Minnesota Nursing] Board to conduct this evaluation" in April and May of 2009. (Respondent's Exhibit 100, accepted post-hearing on October 20, 2011; *see also* Tr. pp. 69, 77). Through her attorney, Joseph A. Rymanowski, she filed a Petition for Reinstatement with the Minnesota Board on or about February 26, 2010. (Respondent's Exhibit 100).¹⁰ She was to present her case for reinstatement before the Minnesota Board on or about June 21, 2011; however, due to an alleged head injury experienced by her attorney just prior to the time set for hearing, the conference was terminated. (*See* Tr., pp. 37-40, p. 65).

10. Following the terminated conference, the Minnesota Board wrote to Respondent Keane and outlined concerns (not public at this time) that it had with the evaluations that she had submitted. (Tr. p.

⁹ No later than 15 days after being notified by the Board of the approval of her selected evaluator. (*See* State's Exhibit 1, attached).

¹⁰ There was no explanation as to why the petition was filed so many months after the evaluations.

64). Respondent met with the Board's review panel¹¹ (without an attorney) to address and/or dispute the concerns that it had with her evaluations on or about September 20, 2011. (*Id.*). Respondent requested a continuance to allow her to obtain documents from her previous attorney, and to retain another attorney. (*Id.*). The review panel agreed, and advised her to contact the Minnesota Board when she was ready to re-petition. (*Id.*).

11. Respondent Keane had no further communications with the Minnesota Board until October 6, 2011, when she filed her second petition for reinstatement. Respondent testified that this was due to the difficulty she experienced in getting documents from her former attorney, and the fact that she broke her neck in December 2010, incurred a long recovery period including two separate hospitalizations, and wanted to be fully healed before going before the board. (*See Tr. pp. 5, 23 – 27, 97*). She further testified that she has obtained, and may be filing more current mental, physical and chemical dependency evaluations. (*See Tr. pp. 57-58*).

12. When the Minnesota Board of Nursing review panel considers Respondent Keane's above-referenced petition for reinstatement (and hence, her mental, physical and chemical dependency evaluations), there are several determinations they could make. The review panel could: (1) determine that more information is needed, outline what information is needed, and then determine how to obtain that information; (2) conclude that Respondent Keane has not met the obligations of her order and then either recommend denial of her petition (the Minnesota Board would have to approve this) or, more likely, work with her to reach an agreement regarding the terms of her reinstatement; or (3) recommend reinstatement, which, again, the Minnesota Board would have to approve. (*See Tr. pp. 52, 53-54*). Inherent to any determination, the review panel will need to consider, and address, the allegations underlying the Minnesota Board's 11/7/2008 Order (not public), and whether she can "demonstrate[] the ability to resume the competent practice of professional nursing with reasonable skill and safety to patients."

13. In Respondent Keane's case, the Minnesota Board appears to have expressed some concern over the age of her (initial) evaluations, although the specifics of this information are not public at this time. (*See Tr. pp. 57-58*). Moreover, Respondent may be filing more current evaluations. (*See supra*).

14. In light of the above, the reinstatement of Respondent Keane's license to practice nursing in Minnesota will not be immediate, and is not imminent.

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).

¹¹ The review panel is a subset of the Minnesota Board of Nursing who considers petitions for reinstatement and makes recommendations to the Board. (*See Tr. p. 53, ll. 20-24*).

2. Respondent's conduct as described in Findings of Fact paragraphs 4, 6, 7, 8, 9, 10, 11, through 12 constitutes "misconduct or unprofessional conduct" pursuant to Wis. Stat. § 441.07(d) and Wis. Admin. Code § N 7.04(7) as the conduct involves "[h]aving disciplinary action through final board adjudication taken against one's license in another jurisdiction."

3. Based on the Findings of Fact and Conclusions of Law above, Respondent is subject to discipline pursuant to Wis. Stat. § 441.07(1).

OPINION

Violations of Law and Appropriate Discipline

From the above findings of facts and law, it is clear that Respondent violated the terms of a 11/7/2008 Order by the Minnesota Board of Nursing that she obtain mental, physical and chemical dependency evaluations within a certain time period, and as such, had her nursing license suspended in that state "... until such time as Respondent complies with the Order for Mental, Physical, and Chemical Dependency Evaluation, dated November 7, 2008, and demonstrates the ability to resume the competent practice of professional nursing with reasonable skill and safety to patients."

It is also clear that by virtue of Respondent's failure to obtain the mental, physical, and chemical dependency evaluations within the given time period, she was deemed to have admitted all of the underlying allegations against her (not public). Finally, while it is true that Respondent thereafter obtained the ordered evaluations from acceptable providers, due to unfortunate circumstances, and at least some putting off, she has not yet presented the results of those evaluations to the review panel and/or the Minnesota Board. Moreover, it is not certain that the Minnesota Board of Nursing would reinstate her nursing license based on those evaluations. (See Findings of Fact, ¶¶ 8 and 12).

That being said, Respondent has obtained mental, physical, and chemical dependency evaluations, as ordered; has reapplied for the reinstatement of her Minnesota nursing license (last month); and correctly identifies her license was suspended pursuant to her failure to obtain ordered evaluations within the time allotted, and not pursuant to her underlying alleged conduct, raising uncertainty as to whether the Minnesota Board of Nursing's 11/7/2008 Order suspending Respondent's license was truly a "final board adjudication," as intended by Wis. Admin. Code § N 7.04(7).¹² Moreover, she does not currently practice in Wisconsin, has not practiced in Wisconsin for approximately six years, and has no plans to practice in Wisconsin at this time. Thus, her repeated requests that the Wisconsin Board of Nursing wait to take any action on her license until the proceedings with respect to her primary license are resolved are not without merit.

¹² Though the Minnesota Board's 11/7/2008 Order concluded that the Board was entitled to enter a default judgment, it is not entirely clear from the Order itself, which merely suspends Respondent Keane's license "until such time as [she] complies with the Order for Mental, Physical, and Chemical Dependency Evaluation...", that this is what it did.

Though the ALJ tended to agree with the Division that the Minnesota Board of Nursing's 11/7/2008 Order, suspending Respondent's license for failure to submit to mental, physical, and chemical dependency evaluations, constituted a final board adjudication as intended by Wis. Admin. Code § N 7.04(7), regardless of this finding, she believed that the Division's request for "reciprocal discipline" (suspending Respondent's license to practice nursing in Wisconsin until her Minnesota license is reinstated) made sense in this case, with minor exception.¹³ The ALJ wrote that "Indeed, pursuant to non-public allegations, the Minnesota Board of Nursing ordered that Respondent submit to certain evaluations in an effort to determine if she was competent to practice in that state, and it has taken more than three years to get that matter resolved in that state." As such, the ALJ indicated that she could not disagree that Respondent's ability to practice in this state should be similarly put on hold until determined safe to practice by Minnesota.

The ALJ, however, did not believe that proceeding to a contested case hearing was the most efficient way of resolving this case and felt that a summary suspension until such time that the Minnesota Board of Nursing considered Respondent's petition for reinstatement, or a similar dispositive motion, would have seemingly led to the same result without as many resources being expended. Likewise, the ALJ believed that the parties could have entered a similar agreement on their own. For this reason, the ALJ did not believe that Respondent should be responsible for the full costs of this proceeding. Accordingly, the ALJ recommended that the Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder should be 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 Safety and Professional Services is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and
- 7) Any other relevant circumstances.

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

¹³ The Division requested that Respondent's license to practice nursing in Wisconsin be suspended until her license to practice in Minnesota was reinstated without restriction, and advised that if her Minnesota license were to be reinstated with restrictions, she petition the Wisconsin Board of Nursing to be reinstated with the same conditions at that time. (*See Tr.*, pp. 93-94). The ALJ believed that to be truly reciprocal, the Board should also reinstate Respondent's license to practice nursing in Wisconsin if Respondent's license is reinstated with restrictions, subject to those restrictions.

The ALJ found that for the most part Respondent Keane cooperated in these proceedings and voluntarily refrained from practicing in this state and her attempts to postpone this matter until her license is legitimate. Balancing these factors with the fact that the Department of Safety and Professional Services is a "program revenue" agency, the ALJ recommended that Respondent Keane should only pay one-half of the costs associated in investigating and prosecuting this matter.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of the Respondent Nancy Keane (formerly known as Nancy Eileen Harris, D.O.B. 6/18/1957), to practice nursing in the State of Wisconsin be and is hereby SUSPENDED, until such time that the Minnesota Board of Nursing reinstates her license, with or without limitations. If limitations are put on her Minnesota license, the same restrictions shall apply to her Wisconsin license.

IT IS FURTHER ORDERED that Respondent Keane shall pay one-half the recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

**Department Monitor
Department of Safety and Professional Services
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 Nancy Keane.

EXPLANATION OF VARIANCE

The Board of Nursing (hereinafter "Board") has reviewed the proposed decision and order prepared by the ALJ and has, for most part, accepted her findings and recommendations including discipline and costs. However, the Board finds it necessary to vary certain findings in the proposed decision to accurately reflect the options available to the Board in regard to publication of its orders. In addition, the ALJ's proposed order has been revised to conform to the standard formatting and content of a final decision order as required by Wis. Stat. 227.46(2) with minor grammatical and typographical corrections. A detailed explanation of the basis for each of the Board's variances is as follows:

1. The Board deleted the ALJ's parenthetical reference in paragraph 4 of the "*Findings of Fact and Conclusions of Law*" to the "*attachment of a certified copy of the Minnesota Orders.*" The deletion of this language was based upon concerns that the orders were not public. By deleting this reference and removing the a copy of the actual documents from the Board's

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Final Decision and Order, the public will not have an actual copy of the Minnesota orders until the orders are deemed to be public by the Minnesota Board of Nursing.

2. The Board deleted the ALJ's directive in paragraph 5 of the "*Findings of Fact and Conclusions of Law*" which states that "***the Board's decision and all related documents are to be sealed.***" Although the Board understands the ALJ's reasoning for this directive, in that the Minnesota order is a non-public order, the Board does not have the authority to "*seal*" its disciplinary orders. A disciplinary order of the Board is a public document under Wisconsin law, and as such, is subject to the Open Records law. It is the standard policy of the Department to publish disciplinary orders on its internet website.
3. The Board revised the text of the footnote #3 which referred to the "*sealing*" of the Board's decision and all related documents and removed the copies of the Minnesota orders which was attached to the proposed decision as Exhibit 1.
4. The Board corrected an error in the numbering of the footnotes in the ALJ's proposed decision; in the sequence of footnotes #6 was missing. In reprinting the documents, the footnotes were renumbered automatically by the word processing program to reflect the complete chronological sequence.
5. The Board renamed the section headings in the ALJ's proposed decision to conform to Wis. Stat. § 227.46(4), which requires that "in any case which is a class 2 disciplinary proceeding, the hearing examiner shall prepare a proposed decision, which includes *findings of fact, conclusions of law, order and opinion*, in a form that may be adopted as the final decision in the case."
6. The Board altered the ALJ's proposed decision section titled as "*Findings of Fact and Conclusions of Law*" because the combined nature of the paragraphs did not clearly identify the conclusions of law and did not include reference to the board's jurisdiction in this matter. The Board made separate legal findings and transferred those findings to a newly created section titled as "*Conclusions of Law.*"
7. Finally, the Board renamed the section of the proposed decision titled as "*Discussion*" to "*Opinion*" and added a subheading titled "*Violations of Law and Appropriate Discipline*" to further clarify the components of the Board's Final Decision and Order in this matter.

Dated at Madison, Wisconsin on February 1st, 2012.

WISCONSIN BOARD OF NURSING

By: Lou Ann Weix
Lou Ann Weix, CRNA
Board Chair