

BEFORE THE BOARD OF NURSING
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-09-0305-NUR REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 2193-2009
TREATMENT OF THE LICENSE OF)	
REUE VERBUS,)	
RN License No. 21697.)	
)	

**FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

The Business Standards Division (BSD) seeks to impose sanctions against the nursing license of Reue Verbus on the basis that his Washington license to practice nursing had been sanctioned and that he failed to disclose the Washington sanction in applying for renewal of his Montana license.

On February 16, 2010, Hearing Examiner Gregory L. Hanchett held a hearing in this matter. Anjeanette Lindle, agency legal counsel, represented BSD. Neel Hammond, attorney at law, appeared on behalf of the licensee. The licensee failed to appear despite proper and timely notice of the hearing and his counsel's efforts to secure his appearance. Therefore, the hearing proceeded in his absence.

Exhibits 1 through 5 were admitted into the record. Mike Fields and Dustin Johnson testified under oath. Based on the evidence adduced at hearing, the following findings of fact, conclusions of law and recommended decision are made.

II. FINDINGS OF FACT

1. At all times material to this case, Verbus has been licensed as a registered nurse in the State of Montana holding license number 21697.

2. On April 11, 2007, Verbus entered into a stipulated consent decree with the Washington Nursing Care Quality Assurance Commission, the professional licensing board for registered nurses in the State of Washington, that resulted in sanctions being imposed against his Washington license. Under the consent decree,

Verbus agreed that he committed unprofessional conduct. Specifically, he entered into a sexual and/or romantic relationship with a client in violation of Washington statutes and regulations controlling the conduct of nurses.

3. As a result of the consent decree, Verbus' Washington license was sanctioned, which sanction included suspending his license to practice with no right to seek reinstatement for a period of five years from the effective date of the order and a fine of \$5,000.00.

4. On May 17, 2007, the Nursing Care Quality Assurance Commission entered its order accepting Verbus' consent decree.

5. The sanctions imposed on Verbus' Washington license have not been set aside.

6. On November 18, 2008, Verbus renewed his Montana nursing license through the state's on-line renewal system. When prompted to answer the question regarding whether he has been subjected to any legal or disciplinary action, he responded "no," despite the fact that the Washington commission had sanctioned his license in 2007 as described above.

7. At the time he answered the question, Verbus knew or should have known that answering "no" to the question of whether he had been subjected to any legal or disciplinary action was false. Nonetheless, he answered the question by responding "no."

8. In order to ensure the protection of the public, the appropriate sanction in this matter should include a term of probation and a suspension that runs concurrent with the Washington suspension of his license.

III. CONCLUSIONS OF LAW¹

A. *Verbus Violated Professional Standards.*

1. The Department bears the burden of proving by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126. The Department must also show that any sanction which it seeks is appropriate under the circumstances of the case.

¹ Statements of fact in the conclusions of law are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

2. Mont. Code Ann. § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

* * *

(3) unprofessional conduct consisting of fraud, misrepresentation, deception or concealment of a material fact in securing a license or license renewal;

(4) unprofessional conduct consisting of signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

* * *

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state . . . if the action is not on appeal, under judicial review, or has been satisfied;

* * *

(18) conduct that does not meet the generally accepted standards of practice.

3. Mont. Code Ann. § 37-1-319 provides that the Board is authorized to adopt rules that define acts of unprofessional conduct, in addition to those contained in Mont. Code Ann. § 37-1-316.

4. Admin. R. Mont. 24.159.2301(2)(p) provides that unprofessional conduct includes failing to report to the Board information known to the individual regarding any possible violation of statutes or rules relating to nursing.

5. Admin. R. Mont. 24.159.2301(2)(q) provides that unprofessional conduct includes having a license in a related health care discipline in Montana denied, revoked, or suspended for any reason that would constitute a disciplinary basis in Montana.

6. Admin. R. Mont. 24.159.2301(2)(u) provides that unprofessional conduct includes failing to report to the Board of Nursing a disciplinary action emanating from a nurse's conduct where the nurse is a named party.

7. The undisputed evidence in this matter shows that Verbus' Washington nursing license has been sanctioned in the State of Washington for engaging in inappropriate sexual conduct with a patient. That conduct is conduct that would merit sanctions of his Montana license had it occurred in this state. *See generally*, Admin. R. Mont. 24.159.230. The evidence also shows that Verbus knew or should have known that answering "no" to the question of whether he had been disciplined was false. Verbus also failed to report the imposition of sanctions against his Washington license. The Department has therefore proven that Verbus violated the above cited provisions of Title 37, Chapter 1, and the above cited provisions of Admin. R. Mont. 24.159.230.

B. The Appropriate Sanction.

8. A regulatory board may impose any sanction provided for by Montana Code Annotated Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, Montana Code Annotated § 37-1-312 provides that a regulatory board may suspend a licensee's license, may impose probation upon the license, may order remedial education or additional training, and may impose a fine not to exceed \$1,000.00.

9. To determine which sanctions are appropriate, the regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can the board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

10. BSD has recommended that the sanctions imposed be conterminous with the sanctions imposed by the Washington board. The hearing examiner agrees that protecting the health, safety and welfare of the public requires that the licensee's Montana license be suspended for at least as long as the Washington license is suspended. In addition, the protection of the public requires that a five-year term of probation be imposed with terms that include successful and timely completion of any Board ordered remedial education or additional training. The BSD has also posited that imposition of a fine is warranted. The hearing examiner agrees in that Verbus' rehabilitation must impress upon him the need to truthfully answer all questions propounded during license renewal.

IV. RECOMMENDED ORDER

Based on the evidence and argument adduced at hearing, the hearing examiner recommends that the Board of Nursing place Verbus' license on probation for a period of five years with the following terms:

(1) Verbus' license shall be suspended for an indefinite period until such time as he has reinstated his Washington nursing license;

(2) Verbus shall pay for, participate in, and successfully and timely complete any Board ordered remedial education and/or additional training;

(3) Verbus shall pay a fine of \$1,000.00 within six months of the Board's final order in this matter;

(4) Verbus shall obey (a) all provisions of Title 37, Chapters 1 and 8, Montana Code Annotated, (b) all provisions of Title 24, Chapter 159, Administrative Rules of Montana, and (c) all requirements or directives imposed by the Board.

DATED this 5th day of March, 2010.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.